

PURPOSE; FINDINGS

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2 SEC. 2. (a) It is the purpose of this Act, in order to
3 make United States exporters more competitive with foreign
4 trade associations, to establish an office within the Depart-
5 ment of Commerce to encourage and promote the formation
6 of export trade associations organized for the exportation of
7 goods and services, notwithstanding restrictions of Federal
8 and State laws relating to certain business practices and re-
9 straints of trade.

10 (b) The Congress finds that—

11 (1) the Department of Commerce has as one of its
12 responsibilities the development and promotion of
13 United States exports;

14 (2) in 1978 the United States suffered the largest
15 trade deficit in its history, amounting to approximately
16 \$30,000,000,000;

17 (3) the trade deficit has contributed to the decline
18 of the dollar on international currency markets, a de-
19 cline which has had an inflationary impact on the
20 United States economy, has been associated with loss
21 of jobs in import-competing industries, and has required
22 an increasingly larger Federal budget deficit to keep
23 the economy growing;

24 (4) United States exports have created and are
25 maintaining millions of jobs in the United States and

1 generate revenues which enable the United States to
2 import those goods and materials required by the
3 United States economy;

4 (5) entities which are owned or subsidized by for-
5 eign governments compete directly with private United
6 States exporters for shares of the world market;

7 (6) the rapidly growing service-related industries
8 are vital to the well-being of the United States econ-
9 omy since they create jobs for seven out of every ten
10 Americans, provide 65 per centum of the Nation's
11 gross national product, and offer the greatest potential
12 for significantly increased industrial trade; and

13 (7) small- and medium-sized businesses in the
14 United States engaged in international transactions
15 would benefit particularly from assistance in competing
16 effectively in foreign markets, including the ability to
17 pool resources and technical expertise and to achieve
18 economies of scale.

19 OFFICE OF EXPORT TRADE

20 SEC. 3. The Secretary of Commerce shall establish
21 within the Department of Commerce an office to promote and
22 encourage to the greatest extent feasible the formation of
23 export trade associations eligible for the exemptions provided
24 in this Act.

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(1) the term "export trade" means trade or commerce in goods or services exported or in the course of being exported from the United States to any foreign country, including activities and agreements incidental to such trade or commerce, but such term does not include—

(B) trade or commerce in patents, licenses, trade secrets, or technology (except to the extent that such trade or commerce is incidental to the sale of such goods or services);

(A) business, repair, and amusement services;

(B) management, legal, engineering, architectural, and other professional services; and

(C) financial, insurance, transportation, and communication services;

1 (3) the term "United States" means the several
2 States of the United States, the District of Columbia,
3 and the territories and possessions of the United
4 States;

5 (4) the term "association" means any combina-
6 tion, by contract or other arrangement, of two or more
7 persons (A) who are citizens of the United States, or
8 (B) which are partnerships or corporations organized or
9 existing under the laws of a State or a territory or pos-
10 session of the United States; except that such term
11 does not include a concern which is controlled by a for-
12 eign concern, as determined under the guidelines for-
13 mulated pursuant to section 9 of this Act;

14 (5) the term "antitrust laws" means "antitrust
15 laws" as defined in section 4 of the Federal Trade
16 Commission Act (15 U.S.C. 44);

17 (6) the term "State" includes the District of Co-
18 lumbia;

19 (7) the term "Secretary" means the Secretary of
20 Commerce;

21 (8) the term "Attorney General" means the At-
22 torney General of the United States; and

23 (9) the term "Chairman" means the Chairman of
24 the Federal Trade Commission.

EXEMPTION FROM ANTITRUST LAWS

SEC. 5. (a) Any association which is formed for the sole purpose of engaging in export trade, which is engaged in export trade, and which is certified in accordance with the procedures set forth in this Act shall be exempt from the antitrust laws, unless—

(1) the association or the export trade of its members results in a substantial restraint of trade or competition within the United States; or

(2) the association or any of its members, with respect to its export trade—

(A) enters into any agreement with any domestic producer who is not a member of the association, to fix prices or the terms of sale or otherwise restrain the free export of goods of non-member firms;

(B) engages in any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods exported by the association or its members;

(C) acquires control of any patent or license useful in the production of the goods that the association or member exports so that the association or member would as a direct result obtain a

1 substantial share of the export market of such
2 goods; or

3 (D) enters into any agreement with a foreign
4 concern engaged in the manufacture or sale of the
5 same goods or services exported by the associ-
6 ation or member, to fix prices or divide sales
7 territories.

8 (b)(1) Only a department or agency of the United States
9 or an officer of the United States acting in his official capac-
10 ity shall have standing to bring an action against an associ-
11 ation for failure to meet the requirements of subsection (a).

12 (2) Any person who has reason to believe that an associ-
13 ation fails to meet the requirements of subsection (a) may file
14 a petition with the Secretary, alleging such failure and re-
15 questing the commencement of appropriate enforcement
16 action. Unless the Secretary, in consultation with the Attor-
17 ney General and the Chairman, determines that the petition
18 does not make allegations upon which, if true, an enforce-
19 ment action could be based, the Secretary shall conduct an
20 adjudicatory proceeding in accordance with the provisions of
21 section 554 of title 5, United States Code, for the purpose of
22 determining the truth of the matters alleged in the petition. If
23 the Secretary determines that the allegations contained in the
24 petition are true, and that they indicate that the association
25 does not meet the requirements of subsection (a), then the

1 Secretary shall bring an action against the association under
2 paragraph (3).

3 (3) Any department, agency, or officer referred to in
4 paragraph (1) of this subsection may bring an action (A) to
5 revoke, in whole or in part, the certification of an association
6 under this Act on the ground that it fails, or has failed, to
7 meet the requirements of subsection (a), or (B) to enjoin or
8 restrain an association from engaging in any activity set forth
9 in paragraph (1) or (2) of subsection (a).

10 (4) Any action brought under paragraph (3) of this sub-
11 section shall be considered to be an action described in sec-
12 tion 1337 of title 28, United States Code.

13 ACQUISITION OF STOCK OR OTHER CAPITAL

14 SEC. 6. Nothing contained in section 7 of the Clayton
15 Act shall be construed to forbid the acquisition or ownership
16 by any corporation of the whole or any part of the stock or
17 other capital of any corporation organized solely for the pur-
18 pose of engaging in export trade, and actually engaged solely
19 in such export trade, unless the effect of such acquisition or
20 ownership may be to restrain trade or substantially lessen
21 competition within the United States.

1 PROHIBITION ON UNFAIR METHODS OF COMPETITION
2 AGAINST ACTIONS WITH RESPECT TO DOMESTIC
3 COMPETITORS

4 SEC. 7. The prohibition against "unfair methods of com-
5 petition" and the remedies provided for enforcing such prohi-
6 bition contained in the Federal Trade Commission Act shall
7 be construed as extending to unfair methods of competition
8 used in export trade against domestic competitors engaged in
9 export trade, even though the acts constituting such unfair
10 methods are done without the territorial jurisdiction of the
11 United States.

12 CERTIFICATION

13 SEC. 8. (a) Any association desiring to obtain certifica-
14 tion as an association engaged solely in export trade for pur-
15 poses of this Act shall file with the Secretary a written notice
16 of intent to meet for the purpose of determining the desirabil-
17 ity of applying for certification and, within sixty days after
18 such meeting, unless such association has filed with the Sec-
19 retary a written notice or decision not to apply for certifica-
20 tion, a written application for certification setting forth the
21 following:

22 (1) The name of the association.

23 (2) The location of all offices and places of busi-
24 ness of the association in the United States and
25 abroad.

1 (3) The names and addresses of all officers, stock-
2 holders, and members of the association.

3 (4) A copy of the certificate or articles of incorpo-
4 ration and bylaws of the association, if the association
5 is a corporation; or a copy of the articles or contract of
6 association, if the association is unincorporated.

7 (5) A description of the goods or services which
8 the association or its members export or propose to
9 export.

10 (6) The methods by which the association con-
11 ducts or proposes to conduct export trade in the de-
12 scribed goods or services, including, but not limited to,
13 any agreement to sell exclusively to or through the as-
14 sociation, any agreement with foreign persons who
15 may act as joint selling agents, any agreement to ac-
16 quire a foreign selling agent, any agreement for pool-
17 ing tangible or intangible property or resources, and
18 any territorial, price-maintenance, membership, or
19 other restrictions to be imposed upon members of the
20 association.

21 (7) Any country in which export trade in the de-
22 scribed goods or services is conducted or proposed to
23 be conducted by or through the association.

24 (8) Any other information which the Secretary
25 may request concerning the organization, operation,

1 management, or finances of the association; the rela-
2 tion of the association to other associations, corpora-
3 tions, partnerships, and individuals; and the effects of
4 the association on competition. The Secretary may not
5 request information under this paragraph which is not
6 reasonably available to the association or which is
7 not necessary for certification of the prospective
8 association.

9 (b)(1) The Secretary shall certify an association within
10 ninety days after receiving the application of an association
11 for certification if the Secretary determines, on the basis of
12 the information obtained from the application, that the associ-
13 ation and its members and the proposed export trade meet
14 the requirements of section 5(a) of this Act.

15 (2) Any association filing an application under this sec-
16 tion may request and may receive expedited action on the
17 application on account of the temporary nature of the export
18 trade of the association, deadlines for bidding on contracts or
19 filling orders, or any other circumstances beyond the control
20 of the association which have a significant impact on the
21 export trade of the association.

22 (3) In any case in which the Secretary determines not to
23 certify an association which has submitted an application for
24 certification under this section, the Secretary shall—

1 (A) notify the association of the determination and
2 the reasons for the determination, and

3 (B) upon request made by the association, afford
4 the association an opportunity for a hearing with re-
5 spect to that determination in accordance with section
6 556 of title 5, United States Code.

7 (c)(1) Whenever there is a substantial change in the as-
8 sociation's membership, export trade, or methods of operation
9 which would cause the association to fail to meet the require-
10 ments of section 5(a) of this Act, the association shall notify
11 the Secretary of the change. If an association fails to so
12 notify the Secretary, the Secretary shall revoke the certifica-
13 tion of the association.

14 (2) After receiving notification of a change pursuant to
15 paragraph (1), or after notifying the association involved, the
16 Secretary may, on his or her own initiative, or upon the rec-
17 ommendation of the Attorney General, the Chairman, or any
18 other person—

19 (A) amend the certification of an association;

20 (B) require that the organization or operation of
21 the association be modified to correspond with the cer-
22 tification of the association; or

23 (C) revoke, in whole or in part, the certification of
24 the association upon a finding (made in an adjudicatory
25 proceeding held in accordance with section 554 of title

1 5, United States Code) that the association, its mem-
2 bers, or its export trade do not meet the requirements
3 of section 5(a) of this Act.

GUIDELINES

5 SEC. 9. (a) Within ninety days after the date of the en-
6 actment of this Act, the Secretary, with the concurrence of
7 the Attorney General and the Chairman, shall formulate and
8 publish proposed guidelines to be applied in determining
9 whether an association, its members, and its export trade
10 meet the requirements of section 5(a) of this Act.

(b) Following publication of the proposed guidelines pursuant to subsection (a), and of any proposed revision of guidelines under subsection (c), interested parties shall have thirty days to comment on the proposed guidelines or revision. The Secretary, the Attorney General, and the Chairman shall review the comments and publish the final guidelines or revision within thirty days after the last day on which comments may be made under the preceding sentence.

19 (c) After publication of final guidelines pursuant to sub-
20 section (b), the Secretary, with the concurrence of the Attor-
21 ney General and the Chairman, shall propose and publish any
22 necessary revision in the guidelines.

23 (d) The formulation and revision of guidelines under this
24 section shall not be considered to be rule making for purposes
25 of subchapter II of chapter 5 of title 5, United States Code.

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ANNUAL REPORTS

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SEC. 10. Every association certified under this Act shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, setting forth the information described in paragraphs (1) through (8) of section 8(a) of this Act.

7

CERTIFICATION OF EXISTING EXPORT TRADE

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ASSOCIATIONS

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SEC. 11. The Secretary shall certify any association engaged solely in export trade which is in compliance with section 5 of the Webb-Pomerene Act on the date of the enactment of this Act if such association, within one hundred and eighty days after such date of enactment, files with the Secretary an application for certification under section 8 of this Act, unless such application shows on its face that the association is not eligible for certification under this Act.

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CONFIDENTIALITY

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SEC. 12. (a) Applications made under section 8 of this Act, including amendments to such applications, and annual reports made under section 10 of this Act, shall be confidential and, except as authorized by this section, no officer or employee, or former officer or employee, of the United States shall disclose or otherwise make available any information contained in any such application, amendment, or annual report.

1 (b)(1) The Secretary shall make available information
 2 contained in any application, amendment, or annual report
 3 described in subsection (a) to the extent required by an order
 4 issued by a United States district court under paragraph (2)
 5 of this subsection, to officers and employees of a Federal
 6 agency who are personally and directly engaged in prepara-
 7 tion for an administrative or judicial proceeding (or investiga-
 8 tion which may result in such a proceeding) to which the
 9 United States or such agency is or may be a party. Such
 10 information may be used only in preparation for such
 11 proceeding.

12 (2) The head of any Federal agency described in para-
 13 graph (1) or, in the case of the Department of Justice, the
 14 Attorney General, the Deputy Attorney General, or an As-
 15 sistant Attorney General, may apply to an appropriate
 16 United States district court for an order referred to in para-
 17 graph (1). Upon such application, the court may grant the
 18 order if the court determines, on the basis of the facts submit-
 19 ted by the applicant, that—

20 (A) in the case of a proceeding or investigation in-
 21 volving a criminal act—

22 (i) there is reasonable cause to believe, based
 23 upon information believed to be reliable, that a
 24 specific criminal act has been committed,

1 (ii) there is reason to believe that the infor-
2 mation sought to be disclosed is probative evi-
3 dence of a matter in issue related to the commis-
4 sion of such criminal act, and

5 (iii) the information so sought cannot reason-
6 ably be obtained from any other source, or, not-
7 withstanding such availability, the information
8 constitutes the most probative evidence of a
9 matter in issue relating to the commission of such
10 criminal act; and

11 (B) in the case of any other proceeding or investi-
12 gation, that—

13 (i) the information sought to be disclosed is
14 probative evidence of a matter under investiga-
15 tion,

16 (ii) the information so sought is or may be
17 material to the proceeding or to a judicial or ad-
18 ministrative proceeding in connection with which
19 the investigation is being conducted, and

20 (iii) the information so sought cannot reason-
21 ably be obtained from any other source or, not-
22 withstanding such availability, the information
23 constitutes the most probative evidence of a
24 matter in issue relating to the commission of the
25 act being investigated.

1 INTERNATIONAL OBLIGATIONS

2 SEC. 13. The Secretary may require any association
3 certified under this Act to modify its operations so as to be
4 consistent with any international obligation which the United
5 States assumes by treaty or statute.

6 REGULATIONS

7 SEC. 14. In addition to those guidelines formulated pur-
8 suant to section 9 of this Act, the Secretary, in consultation
9 with the Attorney General and the Chairman, shall promul-
10 gate such rules and regulations as may be necessary to carry
11 out the purposes of this Act.

12 TASK FORCE STUDY

13 SEC. 15. Seven years after the date of the enactment of
14 this Act, the President shall appoint a task force to study the
15 effect of the operation of this Act on domestic competition
16 and on the trade deficit of the United States and to recom-
17 mend either continuation, revision, or termination of this Act.
18 Such task force shall, within one year after its appointment,
19 complete such study and submit such recommendations to the
20 President.

21 REPEAL OF WEBB-POMERENE ACT

22 SEC. 16. The Webb-Pomerene Act (15 U.S.C. 61 et
23 seq.) is repealed.

1 ers of other countries, to direct the Secretary of Commerce to
2 encourage and promote the formation and operation of export
3 trading companies by providing advice and information to in-
4 terested persons.

5 (b) The Congress finds that—

6 (1) the Department of Commerce has as one of its
7 responsibilities the development and promotion of
8 United States exports;

9 (2) the Department of Commerce also has the re-
10 sponsibility of facilitating the export of finished prod-
11 ucts from United States manufacturers;

12 (3) tens of thousands of United States companies
13 produce exportable goods or services but do not engage
14 in exporting;

15 (4) although the United States is the world's lead-
16 ing agricultural exporting nation, many farm products
17 are not marketed as widely and effectively abroad as
18 they could be through producer-owned export trading
19 companies;

20 (5) exporting requires extensive specialized knowl-
21 edge and skills and entails risks, not otherwise as-
22 sumed, the costs of which smaller producers cannot
23 absorb because of an inability to achieve economies of
24 scale;

1 (6) exporting services in the United States are
2 fragmented into a multitude of separate functions; com-
3 panies attempting to offer comprehensive export trade
4 services lack financial leverage to reach a significant
5 number of potential United States exporters;

6 (7) the United States lacks well-developed export
7 trade intermediaries, such as trading companies, which
8 can achieve economies of scale and acquire expertise
9 enabling them to export goods and services profitably,
10 at low per unit cost to producers;

11 (8) the development of export trading companies
12 in the United States has been hampered by insular
13 business attitudes and by Government regulations;

14 (9) entities which are owned or subsidized by for-
15 eign governments compete directly with private United
16 States exporters for shares of the world market;

17 (10) the rapidly growing service-related industries
18 are vital to the well-being of the United States econo-
19 my since they create jobs for seven out of every ten
20 Americans, provide 65 per centum of the Nation's
21 gross national product, and offer the greatest potential
22 for significantly increased industrial trade involving fin-
23 ished products; and

24 (11) small- and medium-sized businesses in the
25 United States engaged in international transactions

1 would benefit from the development of export trading
2 companies, which would enable them to pool resources
3 and technical expertise and to achieve economies of
4 scale and would otherwise assist them in competing in
5 foreign markets.

6 DEFINITIONS

7 SEC. 3. (a) As used in this Act—

8 (1) the term “export trade” means trade or com-
9 merce in goods produced in the United States, or serv-
10 ices produced in the United States, which are export-
11 ed, or in the course of being exported, from the United
12 States to any other country;

13 (2) the term “goods produced in the United
14 States” means goods manufactured, produced, grown,
15 or extracted in the United States, not more than 50
16 per centum of the fair market value of which is attrib-
17 utable to articles imported into the United States;

18 (3) the term “services produced in the United
19 States” includes, but is not limited to, amusement, ar-
20 chitectural, automatic data processing, business, com-
21 munications, consulting, engineering, financial, insur-
22 ance, legal, management, repair, training, and trans-
23 portation services, not less than 50 per centum of the
24 fair market value of which is provided by United

1 States citizens or is otherwise attributable to the
2 United States;

3 (4) the term "export trade services" includes, but
4 is not limited to, international market research, adver-
5 tising, marketing, insurance, legal assistance, transpor-
6 tation, including trade documentation and freight for-
7 warding, communication and processing of foreign
8 orders to and for exporters and foreign purchasers,
9 warehousing, foreign exchange, and financing, when
10 provided in order to facilitate the export of goods or
11 services produced in the United States;

12 (5) the term "export trading company" means a
13 company which does business under the laws of the
14 United States or any State and which is organized and
15 operated principally for the purpose of—

16 (A) exporting goods produced in the United
17 States or services produced in the United States;
18 and

19 (B) facilitating the exportation of goods pro-
20 duced in the United States or services produced in
21 the United States by unaffiliated persons by pro-
22 viding one or more export trade services;

23 (6) the term "United States" means the several
24 States of the United States, the District of Columbia,
25 the Commonwealth of Puerto Rico, the Virgin Islands,

1 American Samoa, Guam, the Commonwealth of the
2 Northern Mariana Islands, and the Trust Territory of
3 the Pacific Islands;

4 (7) the term "Secretary" means the Secretary of
5 Commerce;

6 (8) the term "State" includes the District of Co-
7 lumbia; and

8 (9) the term "company" means any corporation,
9 partnership, association, or similar organization.

10 (b) The Secretary may by regulation further define any
11 term defined in subsection (a), in order to carry out the pur-
12 poses of this Act.

13 FUNCTIONS OF THE SECRETARY

14 SEC. 4. The Secretary shall promote and encourage the
15 formation and operation of export trading companies by pro-
16 viding information and advice to interested persons. The Sec-
17 retary shall provide a referral service to facilitate contact be-
18 tween producers of exportable goods and services and con-
19 cerns offering export trade services.

20 ELIGIBILITY OF STATE OR LOCAL GOVERNMENT-OWNED

21 EXPORT TRADING COMPANIES

22 SEC. 5. Nothing in this Act preempts or otherwise re-
23 stricts or prevents any State or local government or other
24 governmental authority from organizing, owning, or other-
25 wise participating in or supporting export trading companies.

1 ELIGIBILITY UNDER THE WEBB-POMERENE ACT

2 SEC. 6. Section 2 of the Webb-Pomerene Act (15
3 U.S.C. 62) is amended—

4 (1) by inserting after “engaged solely in such
5 export trade,” the following: “or with respect solely to
6 its export trade (as defined in section 3(1) of the
7 Export Promotion and Export Trading Company Act
8 of 1980), any export trading company as defined in
9 section 3(5) of the Export Promotion and Export Trad-
10 ing Company Act of 1980,”; and

11 (2) by inserting “or such export trading company”
12 after “association” each place, after the first, it ap-
13 pears.

14 TASK FORCE STUDY

15 SEC. 7. Five years after the date of the enactment of
16 this Act, the President shall appoint a task force to study the
17 effect the operation of this Act on domestic competition and
18 on the trade deficit of the United States and to recommend
19 either continuation, revision, or termination of this Act and
20 the amendments made by this Act. Such task force shall,
21 within one year after its appointment, complete such study
22 and submit such recommendations to the President.

1 (1) tens of thousands of American companies pro-
2 duce exportable goods or services but do not engage in
3 exporting;

4 (2) although the United States is the world's lead-
5 ing agricultural exporting nation, many farm products
6 are not marketed as widely and effectively abroad as
7 they could be through producer-owned export trading
8 companies;

9 (3) exporting requires extensive specialized knowl-
10 edge and skills and entails additional, unfamiliar risks
11 which present costs for which smaller producers cannot
12 realize economies of scale;

13 (4) export trade intermediaries, such as trading
14 companies, can achieve economies of scale and acquire
15 expertise enabling them to export goods and services
16 profitably, at low per unit cost to producers;

17 (5) the United States lacks well-developed export
18 trade intermediaries to package export trade services
19 at reasonable prices (exporting services are fragmented
20 into a multitude of separate functions; companies at-
21 tempting to offer comprehensive export trade services
22 lack financial leverage to reach a significant portion of
23 potential United States exporters);

(6) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations; and

(7) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 3. (a) As used in this Act—

(1) the term “export trade” means trade or commerce in goods produced in the United States or services produced in the United States exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term “goods produced in the United States” means tangible property manufactured, produced, grown, or extracted in the United States, not more than 50 per centum of the fair market value of

1 which is attributable to articles imported into the
2 United States;

3 (3) the term "services produced in the United
4 States" includes, but is not limited to amusement, ar-
5 chitectural, automatic data processing, business, com-
6 munications, consulting, engineering, financial, insur-
7 ance, legal, management, repair, training, and trans-
8 portation services, not less than 50 per centum of the
9 fair market value of which is provided by United
10 States citizens or is otherwise attributable to the
11 United States;

12 (4) the term "export trade services" includes, but
13 is not limited to, international market research, adver-
14 tising, marketing, insurance, legal assistance, transpor-
15 tation, including trade documentation and freight for-
16 warding, communication and processing of foreign
17 orders to and for exporters and foreign purchasers,
18 warehousing, foreign exchange, and financing when
19 provided in order to facilitate the export of goods or
20 services produced in the United States;

21 (5) the term "export trading company" means a
22 company which does business under the laws of the
23 United States or any State and which is organized and
24 operated principally for the purposes of—

1 (A) exporting goods or services produced in
2 the United States; and

3 (B) facilitating the exportation of goods and
4 services produced in the United States by unaffil-
5 iated persons by providing one or more export
6 trade services;

7 (6) the term "United States" means the several
8 States of the United States, the District of Columbia,
9 the Commonwealth of Puerto Rico, the Virgin Islands,
10 American Samoa, Guam, the Commonwealth of the
11 Northern Mariana Islands, and the Trust Territory of
12 the Pacific Islands;

13 (7) the term "Secretary" means the Secretary of
14 Commerce; and

15 (8) the term "company" means any corporation,
16 partnership, association, or similar organization.

17 (b) The Secretary is authorized, by regulation, to further
18 define such terms consistent with this section.

19 FUNCTIONS OF THE SECRETARY OF COMMERCE

20 SEC. 4. The Secretary shall promote and encourage the
21 formation and operation of export trading companies by pro-
22 viding information and advice to interested persons. The As-
23 sistant Secretary of Commerce for Trade Promotion shall be
24 responsible for such activities and shall provide a referral

1 service to facilitate contact between producers of exportable
2 goods and services and firms offering export trade services.

3 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
4 BANK HOLDING COMPANIES, AND INTERNATIONAL
5 BANKING CORPORATIONS

6 SEC. 5. (a) For the purpose of this section—

7 (1) the term “banking organization” means any
8 State bank, national bank, bank holding company,
9 Edge Act Corporation, or Agreement Corporation;

10 (2) the term “State bank” means any bank which
11 is incorporated under the laws of any State, any terri-
12 tory of the United States, the Commonwealth of
13 Puerto Rico, Guam, American Samoa, the Common-
14 wealth of the Northern Mariana Islands, or the Virgin
15 Islands, or which is operating under the Code of Law
16 for the District of Columbia (except a national bank);

17 (3) the term “State member bank” means any
18 State bank which is a member of the Federal Reserve
19 System;

20 (4) the term “State nonmember insured bank”
21 means any State bank which is not a member of the
22 Federal Reserve System, but the deposits of which are
23 insured by the Federal Deposit Insurance Corporation;

1 (5) the term "bank holding company" has the
2 same meaning as in the Bank Holding Company Act of
3 1956;

4 (6) the term "Edge Act Corporation" means a
5 corporation organized under section 25(a) of the Fed-
6 eral Reserve Act;

7 (7) the term "Agreement Corporation" means a
8 corporation operating subject to section 25 of the Fed-
9 eral Reserve Act;

10 (8) the term "appropriate Federal banking
11 agency" means—

12 (A) the Comptroller of the Currency with re-
13 spect to a national bank;

14 (B) the Board of Governors of the Federal
15 Reserve System with respect to a State member
16 bank, bank holding company, Edge Act Corpora-
17 tion, or Agreement Corporation; and

18 (C) the Federal Deposit Insurance Corpora-
19 tion with respect to a State nonmember insured
20 bank;

21 (9) the term "capital and surplus" means paid in
22 and unimpaired capital and surplus, and includes undi-
23 vided profits and such other items as the appropriate
24 Federal banking agency may deem appropriate;

1 (10) an "affiliate" of a banking organization or
2 export trading company is a person who controls, is
3 controlled by, or is under common control with such
4 banking organization or export trading company;

5 (11) the term "control" means the power, directly
6 or indirectly, to vote more than 50 per centum of the
7 voting stock or other evidences of ownership of any
8 person, or otherwise having the power to direct or
9 cause the direction of the management or policies of
10 any person; and

11 (12) the term "export trading company" has the
12 same meaning as in section 3(5) of this Act, or any
13 company organized and operating principally for the
14 purpose of providing export trade services, as defined
15 in section 3(4) of this Act.

16 (b) Notwithstanding any prohibition, restriction, limita-
17 tion, condition, or requirement contained in any other provi-
18 sion of law, any banking organization, subject to the proce-
19 dures, limitations, and conditions of this section, may acquire
20 and hold for its own account, either directly or indirectly, the
21 voting stock or other evidences of ownership of any export
22 trading company.

23 (c)(1) Any banking organization may invest not more
24 than 5 per centum of its capital and surplus in no more than
25 50 per centum of the voting stock or other evidences of own-

1 ership of any export trading company without obtaining the
2 prior approval of the appropriate Federal banking agency,
3 except that an Edge Act Corporation not engaged in bank-
4 ing, as defined by the Board of Governors of the Federal
5 Reserve System, may invest up to 25 per centum of its capi-
6 tal and surplus in no more than 50 per centum of the voting
7 stock or other evidences of ownership of any such company
8 without obtaining the prior approval of the Board of Gover-
9 nors of the Federal Reserve System.

10 (2) Any banking organization may, subject to the limita-
11 tions contained in subsection (e), make an investment in the
12 voting stock or other evidences of ownership of an export
13 trading company which does not comply with paragraph (1),
14 if it files an application with the appropriate Federal banking
15 agency to make such investment and within sixty days after
16 the receipt of such application, the appropriate Federal bank-
17 ing agency has not issued an order pursuant to subsection (d)
18 denying such proposed investment. The appropriate Federal
19 banking agency may require such information in any applica-
20 tion filed pursuant to this subsection as is reasonably neces-
21 sary to consider the factors specified in subsection (d). An
22 application is received for the purpose of this paragraph when
23 it has been accepted for processing by the appropriate Fed-
24 eral banking agency. Upon receipt of an application, the ap-
25 propriate Federal banking agency shall transmit a copy

1 thereof to the Secretary of Commerce and afford the Secre-
2 tary a reasonable time, not to exceed thirty days, to present
3 the views of the Department of Commerce on the application.

4 An investment may be made prior to the expiration of the
5 disapproval period if the appropriate Federal banking agency
6 issues written notice of its intent not to disapprove the
7 investment.

8 (3) Any banking organization whose proposed acquisi-
9 tion under paragraph (2) is disapproved by an order of the
10 appropriate Federal banking agency under subsection (d),
11 may obtain a review of such order in the United States court
12 of appeals within any circuit wherein such organization has
13 its principal place of business, or in the Court of Appeals for
14 the District of Columbia Circuit, by filing a notice of appeal
15 in such court within thirty days from the date of such order,
16 and simultaneously sending a copy of such notice by regis-
17 tered or certified mail to the appropriate Federal banking
18 agency. The appropriate Federal banking agency shall
19 promptly certify and file in such court the record upon which
20 the disapproval was based. The court shall set aside any
21 order found to be (A) arbitrary, capricious, an abuse of discre-
22 tion, or otherwise not in accordance with law; (B) contrary to
23 constitutional right, power, privilege, or immunity; (C) in
24 excess of statutory jurisdiction, authority, or limitations, or

1 short of statutory right; or (D) not in accordance with the
2 procedures required by this section.

3 (d) The appropriate Federal banking agency may disap-
4 prove any investment for which an application is filed under
5 subsection (c)(2) if it finds that the export-related benefits of
6 such acquisition are clearly outweighed in the public interest
7 by adverse competitive, financial, managerial, or other bank-
8 ing factors associated with the particular acquisition. In
9 weighing the export-related benefits of a particular proposal,
10 the appropriate Federal banking agency shall give due con-
11 sideration to the views of the Department of Commerce fur-
12 nished pursuant to subsection (c)(2), and shall give special
13 weight to any application that will open new markets for
14 United States goods and services abroad, or that will involve
15 small- or medium-size businesses or agricultural concerns
16 new to the export market. Any disapproval order issued
17 under this section must contain a statement of the reasons for
18 disapproval.

19 (e)(1) No banking organization holding voting stock or
20 other evidences of ownership of any export trading company
21 may extend credit or cause any affiliate to extend credit to
22 any export trading company or to customers of such company
23 on terms more favorable than those afforded similar borrow-
24 ers in similar circumstances.

1 (2) Except as provided in subsection (c)(1), no banking
2 organization may, in the aggregate, invest in excess of 10 per
3 centum of its capital and surplus in the stock or other
4 evidences of ownership of one or more export trading
5 companies.

6 (f) The appropriate Federal banking agencies may adopt
7 such rules and regulations and require such reports as are
8 necessary to enable them to carry out the provisions of this
9 section and prevent evasions thereof.

10 INITIAL INVESTMENTS AND OPERATING EXPENSES

11 SEC. 6. (a) The Export-Import Bank of the United
12 States is authorized to provide loans or guarantees to export
13 trading companies to help such companies meet operating ex-
14 penses and make investments in facilities related to the
15 export of goods or services produced in the United States, or
16 related to the provision of export trade services, if in the
17 judgment of the Board of Directors of the Bank—

18 (1) the loans or guarantees would facilitate ex-
19 ports which would not otherwise occur;

20 (2) the company is unable to obtain sufficient fi-
21 nancing on reasonable terms from other sources; and

22 (3) there is reasonable assurance of repayment.

23 (b) Loans and guarantees under this section shall be
24 used only for the financing of exports and export trade serv-
25 ices. The amount of loans and guarantees to any single con-

1 cern in any year may not exceed 50 per centum of such con-
 2 cern's annual operating expenses, as determined by the
 3 Board.

4 (c) The Bank shall not make loans or guarantees availa-
 5 ble to any one company in excess of \$1,000,000 in any
 6 twelve-month period, or \$2,500,000 in total. The aggregate
 7 amount of loans or guarantees outstanding at any time under
 8 this section may not exceed \$100,000,000. The authority
 9 granted by this section shall expire five years after the date
 10 of enactment of this Act.

11 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
 12 INVENTORY

13 SEC. 7. The Export-Import Bank of the United States
 14 is authorized and directed to provide guarantees for up to 80
 15 per centum of the principal of loans extended by financial
 16 institutions or other private creditors to export trading com-
 17 panies as defined in section 3(5) of this Act, or to exporters,
 18 for periods up to one year when in the judgment of the Board
 19 of Directors—

20 (1) such guarantees would facilitate expansion of
 21 exports which would not otherwise occur;

22 (2) the guarantees are essential to enable the
 23 export trading company or exporter to receive ade-
 24 quate credit to conduct normal business operations; and

1 (3) the guarantees are adequately secured by
2 export accounts receivable or inventories of exportable
3 goods.

4 Guarantees provided under the authority of this section shall
5 be subject to limitations contained in annual appropriations
6 Acts.

7 ELIGIBILITY OF STATE OR LOCAL GOVERNMENT-OWNED
8 EXPORT TRADING COMPANIES

9 SEC. 8. Nothing in this Act preempts or otherwise re-
10 stricts, prevents, or discourages any State or local govern-
11 ment, or other governmental authority from organizing,
12 owning, or otherwise participating in or supporting export
13 trading companies. In carrying out the authority provided by
14 sections 6 and 7, the Export-Import Bank of the United
15 States shall not deny eligibility to an export trading company
16 on the basis of ownership of such company by a State or local
17 government or other governmental authority.

18 ELIGIBILITY UNDER THE WEBB-POMERENE ACT

19 SEC. 9. Section 2 of the Webb-Pomerene Act (15
20 U.S.C. 62) is amended—

21 (1) by inserting after “engaged solely in such
22 export trade,” the following: “or with respect solely to
23 its export trade activities, any corporation which is an
24 export trading company as defined in section 3(5) of
25 the Export Trading Company Act of 1980,”; and

5 SEC. 10. (a) Paragraph (3) of section 992(d) of the In-
6 ternal Revenue Code of 1954 (relating to ineligible corpora-
7 tions) is amended by inserting before the comma at the end
8 thereof the following: "(other than a financial institution
9 which is a banking organization as defined in section 5(a)(1)
0 of the Export Trading Company Act of 1980 investing in the
1 voting stock of an export trading company (as defined in sec-
2 tion 3(5) of the Export Trading Act of 1980) in accordance
3 with the provisions of section 5 of such Act)".

(b) Paragraph (1) of section 993(a) of the Internal Revenue Code of 1954 (relating to qualified export receipts of a DISC) is amended—

17 (1) by striking out "and" at the end of subpara-
18 graph (G),

19 (2) by striking out the period at the end of sub-
20 paragraph (H) and inserting in lieu thereof "and", and

21 (3) by adding at the end thereof the following new
22 subparagraph:

“**(I)** in the case of a DISC which is an
export trading company (as defined in section 3(5)
of the Export Trading Company Act of 1980), or

1 which is a subsidiary of such a company, gross re-
2 ceipts from the export of services produced in the
3 United States (as defined in section 3(3) of such
4 Act) or from export trade services (as defined in
5 section 3(4) of such Act).”.

6 (c) The Secretary of Commerce, after consultation with
7 the Secretary of the Treasury, shall develop, prepare, and
8 distribute to interested parties, including potential exporters,
9 information concerning the manner in which an export trad-
10 ing company can utilize the provisions of part IV of sub-
11 chapter N of chapter 1 of the Internal Revenue Code of 1954
12 (relating to domestic international sales corporations), and
13 any advantages or disadvantages which may reasonably be
14 expected from the election of DISC status or the establish-
15 ment of a subsidiary corporation which is a DISC.

16 (d) The amendments made by this section shall apply
17 with respect to taxable years beginning after December 31,
18 1980.

19 SUBCHAPTER S STATUS FOR EXPORT TRADING

20 COMPANIES

21 SEC. 11. (a) Paragraph (1) of section 1371(a) of the
22 Internal Revenue Code of 1954 (relating to the definition of a
23 small business corporation) is amended by inserting “, except
24 in the case of the shareholders of an export trading company
25 (as defined in section 3(5) of the Export Trading Company

1 Act of 1980) if such shareholders are otherwise small busi-
2 ness corporations for the purpose of this subchapter," after
3 "shareholders".

4 (b) The first sentence of section 1372(e)(4) of such Code
5 (relating to foreign income) is amended by inserting ", other
6 than an export trading company," after "small business
7 corporation".

8 (c) The amendments made by this section shall apply
9 with respect to taxable years beginning after December 31,
10 1980.



1 (1) tens of thousands of American companies pro-
2 duce exportable goods or services but do not engage in
3 exporting;

4 (2) although the United States is the world's lead-
5 ing agricultural exporting nation, many farm products
6 are not marketed as widely and effectively abroad as
7 they could be through producer-owned export trading
8 companies;

9 (3) exporting requires extensive specialized knowl-
10 edge and skills and entails additional, unfamiliar risks
11 which present costs for which smaller producers cannot
12 realize economies of scale;

13 (4) export trade intermediaries, such as trading
14 companies, can achieve economies of scale and acquire
15 expertise enabling them to export goods and services
16 profitably, at low per unit cost to producers;

17 (5) the United States lacks well-developed export
18 trade intermediaries to package export trade services
19 at reasonable prices (exporting services are fragmented
20 into a multitude of separate functions; companies at-
21 tempting to offer comprehensive export trade services
22 lack financial leverage to reach a significant portion of
23 potential United States exporters);

(6) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations; and

(7) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 3. (a) As used in this Act—

(1) the term “export trade” means trade or commerce in goods produced in the United States, or services produced in the United States, which are exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term “goods produced in the United States” means tangible property manufactured, produced, grown, or extracted in the United States, the cost of the imported raw materials and components of

1 which do not exceed 50 per centum of the sales price
2 of the property;

3 (3) the term "services produced in the United
4 States" includes, but is not limited to, accounting,
5 amusement, architectural, automatic data processing,
6 business, communications, consulting, construction
7 franchising and licensing, engineering, financial, insur-
8 ance, legal, management, repair, tourism, training, and
9 transportation services, not less than 50 per centum of
10 the sales or billings of which is provided by United
11 States citizens or is otherwise attributable to the
12 United States;

13 (4) the term "export trade services" includes, but
14 is not limited to, international market research, adver-
15 tising, marketing, product research and design, insur-
16 ance, legal assistance, transportation, including trade
17 documentation and freight forwarding, communication
18 and processing of foreign orders to and for exporters
19 and foreign purchasers, warehousing, foreign exchange,
20 and financing, when provided in order to facilitate the
21 export of goods or services produced in the United
22 States;

23 (5) the term "export trading company" means a
24 company which does business under the laws of the

1 United States or any State and which is organized and
2 operated principally for the purposes of—

3 (A) exporting goods produced in the United
4 States or services produced in the United States;
5 and

6 (B) facilitating the exportation of goods pro-
7 duced in the United States and services produced
8 in the United States by unaffiliated persons by
9 providing one or more export trade services;

10 (6) the term “United States” means the several
11 States of the United States, the District of Columbia,
12 the Commonwealth of Puerto Rico, the Virgin Islands,
13 American Samoa, Guam, the Commonwealth of the
14 Northern Mariana Islands, and the Trust Territory of
15 the Pacific Islands;

16 (7) the term “Secretary” means the Secretary of
17 Commerce;

18 (8) the term “State” includes the District of Co-
19 lumbia; and

20 (9) the term “company” means any corporation,
21 partnership, association, or similar organization.

22 (b) The Secretary is authorized to further define by reg-
23 ulation, consistent with subsection (a), any term set forth in
24 such subsection.

1 FUNCTIONS OF THE SECRETARY OF COMMERCE

2 SEC. 4. The Secretary shall promote and encourage the
3 formation and operation of export trading companies by pro-
4 viding information and advice to interested persons. The As-
5 sistant Secretary of Commerce for Trade Promotion shall be
6 responsible for such activities and shall provide a referral
7 service to facilitate contact between producers of exportable
8 goods and services and firms offering export trade services.

9 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
10 BANK HOLDING COMPANIES, AND INTERNATIONAL
11 BANKING CORPORATIONS

12 SEC. 5. (a) For purposes of this section—

13 (1) the term “banking organization” means any
14 State bank, national bank, bank holding company,
15 Edge Act Corporation, or Agreement Corporation;

16 (2) the term “State bank” means any bank which
17 is incorporated under the laws of any State, any terri-
18 tory of the United States, the Commonwealth of
19 Puerto Rico, Guam, American Samoa, the Common-
20 wealth of the Northern Mariana Islands, or the Virgin
21 Islands, or which is operating under the Code of Law
22 for the District of Columbia (except a national bank);

23 (3) the term “State member bank” means any
24 State bank which is a member of the Federal Reserve
25 System;

1 (4) the term "State nonmember insured bank"
2 means any State bank which is not a member of the
3 Federal Reserve System, but the deposits of which are
4 insured by the Federal Deposit Insurance Corporation;

5 (5) the term "bank holding company" has the
6 same meaning as in the Bank Holding Company Act of
7 1956;

8 (6) the term "Edge Act Corporation" means a
9 corporation organized under section 25(a) of the Fed-
10 eral Reserve Act;

11 (7) the term "Agreement Corporation" means a
12 corporation operating subject to section 25 of the Fed-
13 eral Reserve Act;

14 (8) the term "appropriate Federal banking
15 agency" means—

16 (A) the Comptroller of the Currency with re-
17 spect to a national bank;

18 (B) the Board of Governors of the Federal
19 Reserve System with respect to a State member
20 bank, bank holding company, Edge Act Corpora-
21 tion, or Agreement Corporation; and

22 (C) the Federal Deposit Insurance Corpora-
23 tion with respect to a State nonmember insured
24 bank;

(9) the term "capital and surplus" means paid in and unimpaired capital and surplus, and includes undivided profits and such other items as the appropriate Federal banking agency may deem appropriate;

(10) an "affiliate" of a banking organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company;

(11) the term "control" means the power, directly or indirectly, to vote more than 50 per centum of the voting stock or other evidences of ownership of any person, or otherwise having the power to direct or cause the direction of the management or policies of any person; and

(12) the term "export trading company" has the same meaning as in section 3(5) of this Act, or any company organized and operating principally for the purpose of providing export trade services, as defined in section 3(4) of this Act.

(b) Notwithstanding any prohibition, restriction, limitation, condition, or requirement contained in any other provision of law, any banking organization, subject to the procedures, limitations, and conditions of this section, may acquire and hold for its own account, either directly or indirectly, the

1 voting stock or other evidences of ownership of any export
2 trading company.

3 (c)(1) Any banking organization may invest not more
4 than 5 per centum of its capital and surplus in no more than
5 50 per centum of the voting stock or other evidences of own-
6 ership of any export trading company without obtaining the
7 prior approval of the appropriate Federal banking agency,
8 except that an Edge Act Corporation not engaged in bank-
9 ing, as defined by the Board of Governors of the Federal
10 Reserve System, may invest up to 25 per centum of its capi-
11 tal and surplus in no more than 50 per centum of the voting
12 stock or other evidences of ownership of any such company
13 without obtaining the prior approval of the Board of Gover-
14 nors of the Federal Reserve System.

15 (2) Any banking organization may, subject to the limita-
16 tions contained in subsection (e), make an investment in the
17 voting stock or other evidences of ownership of an export
18 trading company which does not comply with paragraph (1),
19 if it files an application with the appropriate Federal banking
20 agency to make such investment and within sixty days after
21 the receipt of such application, the appropriate Federal bank-
22 ing agency has not issued an order pursuant to subsection (d)
23 denying such proposed investment. The appropriate Federal
24 banking agency may require such information in any applica-
25 tion filed pursuant to this subsection as is reasonably neces-

1 sary to consider the factors specified in subsection (d). An
2 application is received for the purpose of this paragraph when
3 it has been accepted for processing by the appropriate Fed-
4 eral banking agency. Upon receipt of an application, the
5 appropriate Federal banking agency shall transmit a copy
6 thereof to the Secretary of Commerce and afford the Secre-
7 tary a reasonable time, not to exceed thirty days, to present
8 the views of the Department of Commerce on the application.
9 An investment may be made prior to the expiration of the
10 disapproval period if the appropriate Federal banking agency
11 issues written notice of its intent not to disapprove the
12 investment.

13 (3) Any banking organization whose proposed acquisi-
14 tion under paragraph (2) is disapproved by an order of the
15 appropriate Federal banking agency under subsection (d),
16 may obtain a review of such order in the United States court
17 of appeals within any circuit wherein such organization has
18 its principal place of business, or in the Court of Appeals for
19 the District of Columbia Circuit, by filing a notice of appeal
20 in such court within thirty days from the date of such order,
21 and simultaneously sending a copy of such notice by regis-
22 tered or certified mail to the appropriate Federal banking
23 agency. The appropriate Federal banking agency shall
24 promptly certify and file in such court the record upon which
25 the disapproval was based. The court shall set aside any

1 order found to be (A) arbitrary, capricious, an abuse of discre-
2 tion, or otherwise not in accordance with law; (B) contrary to
3 constitutional right, power, privilege or immunity; (C) in
4 excess of statutory jurisdiction, authority, or limitations, or
5 short of statutory right; or (D) not in accordance with the
6 procedures required by this section.

7 (d) The appropriate Federal banking agency may disap-
8 prove any investment for which an application is filed under
9 subsection (c)(2) if it finds that the export-related benefits of
10 such acquisition are clearly outweighed in the public interest
11 by adverse competitive, financial, managerial, or other bank-
12 ing factors associated with the particular acquisition. In
13 weighing the export-related benefits of a particular proposal,
14 the appropriate Federal banking agency shall give due con-
15 sideration to the views of the Department of Commerce fur-
16 nished pursuant to subsection (c)(2), and shall give special
17 weight to any application that will open new markets for
18 United States goods and services abroad, or that will involve
19 small- or medium-size businesses or agricultural concerns
20 new to the export market. Any disapproval order issued
21 under this section must contain a statement of the reasons for
22 disapproval.

23 (e)(1) No banking organization holding voting stock or
24 other evidences of ownership of any export trading company
25 may extend credit or cause any affiliate to extend credit to

1 any export trading company or to customers of such company
2 on terms more favorable than those afforded similar borrow-
3 ers in similar circumstances.

4 (2) Except as provided in subsection (c)(1), no banking
5 organization may, in the aggregate, invest in excess of 10 per
6 centum of its capital and surplus in the stock or other
7 evidences of ownership of one or more export trading
8 companies.

9 (f) The appropriate Federal banking agencies may adopt
10 such rules and regulations and require such reports as are
11 necessary to enable them to carry out the provisions of this
12 section and prevent evasions thereof.

13 INITIAL INVESTMENTS AND OPERATING EXPENSES

14 SEC. 6. (a) The Export-Import Bank of the United
15 States is authorized to provide loans or guarantees to export
16 trading companies to help such companies meet operating ex-
17 penses and make investments in facilities related to the
18 export of goods produced in the United States or services
19 produced in the United States, or related to the provision of
20 export trade services, if in the judgment of the Board of
21 Directors of the Bank—

22 (1) the loans or guarantees would facilitate
23 exports which would not otherwise occur;

24 (2) the company is unable to obtain sufficient
25 financing on reasonable terms from other sources; and

1 (3) there is reasonable assurance of repayment.

(b) Loans and guarantees under this section shall be used only for the financing of exports and export trade services. The amount of loans and guarantees to any single concern in any year may not exceed 50 per centum of such concern's annual operating expenses, as determined by the Board.

(c) The bank shall not make loans or guarantees available to any one company in excess of \$1,000,000 in any twelve-month period, or \$2,500,000 in total. The aggregate amount of loans or guarantees outstanding at any time under this section may not exceed \$100,000,000. The authority granted by this section shall expire five years after the date of enactment of this Act.

15 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
16 INVENTORY

17 SEC. 7. The Export-Import Bank of the United States
18 is authorized and directed to provide guarantees for up to 80
19 per centum of the principal of loans extended by financial
20 institutions or other private creditors to export trading com-
21 panies as defined in section 3(5) of this Act, or to exporters,
22 for periods up to one year when in the judgment of the Board
23 of Directors—

24 (1) such guarantees would facilitate expansion of
25 exports which would not otherwise occur;

1 (2) the guarantees are essential to enable the
2 export trading company or exporter to receive ade-
3 quate credit to conduct normal business operations; and

4 (3) the guarantees are adequately secured by
5 export accounts receivable or inventories of exportable
6 goods.

7 Guarantees provided under the authority of this section shall
8 be subject to limitations contained in annual appropriations
9 Acts.

10 ELIGIBILITY UNDER THE WEBB-POMERENE ACT

11 SEC. 8. Section 2 of the Webb-Pomerene Act (15
12 U.S.C. 62) is amended—

13 (1) by inserting after “engaged solely in such
14 export trade,” the following: “or with respect solely to
15 its export trade activities, any corporation which is an
16 export trading company as defined in section 3(5) of
17 the Export Trading Company Promotion Act of
18 1980,”; and

19 (2) by inserting “or export trading company” after
20 “association” each place, after the first, it appears.

21 APPLICATION OF DISC RULES TO EXPORT TRADING
22 COMPANIES

23 SEC. 9. (a) Paragraph (3) of section 992(d) of the Inter-
24 nal Revenue Code of 1954 (relating to ineligible corpora-
25 tions) is amended by inserting before the comma at the end

1 thereof the following: “(other than a financial institution
2 which is a banking organization as defined in section 5(a)(1)
3 of the Export Trading Company Promotion Act of 1980 in-
4 vesting in the voting stock of an export trading company (as
5 defined in section 3(5) of the Export Trading Company Pro-
6 motion Act of 1980) in accordance with the provisions of
7 section 5 of such Act)”.

8 (b) Paragraph (1) of section 993(a) of the Internal Reve-
9 nue Code of 1954 (relating to qualified export receipts of a
10 DISC) is amended—

11 (1) by striking out “and” at the end of subpara-
12 graph (G),

13 (2) by striking out the period at the end of sub-
14 paragraph (H) and inserting in lieu thereof “and”, and

15 (3) by adding at the end thereof the following new
16 subparagraph:

17 “(I) in the case of a DISC which is an
18 export trading company (as defined in section 3(5)
19 of the Export Trading Company Promotion Act of
20 1980), or which is a subsidiary of such a compa-
21 ny, gross receipts from the export of services pro-
22 duced in the United States (as defined in section
23 3(3) of such Act) or from export trade services (as
24 defined in section 3(4) of such Act).”.

1 (c) The Secretary of Commerce, after consultation with
2 the Secretary of the Treasury, shall develop, prepare, and
3 distribute to interested parties, including potential exporters,
4 information concerning the manner in which an export trad-
5 ing company can utilize the provisions of part IV of sub-
6 chapter N of chapter 1 of the Internal Revenue Code of 1954
7 (relating to domestic international sales corporations), and
8 any advantages or disadvantages which may reasonably be
9 expected from the election of DISC status or the establish-
10 ment of a subsidiary corporation which is a DISC.

11 (d) The amendments made by this section shall apply
12 with respect to taxable years beginning after December 31,
13 1980.

14 SUBCHAPTER S STATUS FOR EXPORT TRADING

15 COMPANIES

16 SEC. 10. (a) Paragraph (1) of section 1371(a) of the
17 Internal Revenue Code of 1954 (relating to the definition of a
18 small business corporation) is amended by inserting “, except
19 in the case of the shareholders of an export trading company
20 (as defined in section 3(5) of the Export Trading Company
21 Promotion Act of 1980) if such shareholders are otherwise
22 small business corporations for the purpose of this sub-
23 chapter,” after “shareholders”.

24 (b) The first sentence of section 1372(e)(4) of such Code
25 (relating to foreign income) is amended by inserting “, other

1 than an export trading company," after "small business
2 corporation".

3 (c) The amendments made by this section shall apply
4 with respect to taxable years beginning after December 31,
5 1980.

6 REPORT TO CONGRESS

7 SEC. 11. Not more than five years after the date of
8 enactment of this Act, the United States Trade Representa-
9 tive shall report to the Congress on the effects of this Act,
10 and the amendments made by this Act, on the trade of the
11 United States and the trade deficit of the United States. The
12 United States Trade Representative shall prepare such
13 report in consultation with the Attorney General of the
14 United States, the Secretary of the Treasury, the Secretary
15 of Commerce, the Chairman of the Federal Reserve System,
16 and the Comptroller of the Currency.



H. R. 7436

To encourage exports by facilitating the formation and operation of export trading companies, export trading associations, and the expansion of export trade services generally.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1980

Mr. REUSS introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, the Judiciary, and Ways and Means

A BILL

To encourage exports by facilitating the formation and operation of export trading companies, export trading associations, and the expansion of export trade services generally.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—EXPORT TRADING COMPANIES**

4 **SHORT TITLE**

5 SEC. 101. This title may be cited as the “Export Trad-
6 ing Company Act of 1980”.

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

(2) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

(4) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters);

(6) State and local government activities which initiate, facilitate, or expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(7) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations; and

(8) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term “export trade” means trade or commerce in goods sourced in the United States or services produced in the United States exported, or in the

1 course of being exported, from the United States to
2 any foreign nation;

3 (2) the term "goods produced in the United
4 States" means tangible property manufactured, pro-
5 duced, grown, or extracted in the United States, the
6 cost of the imported raw materials and components
7 thereof shall not exceed 50 per centum of the sales
8 price;

9 (3) the term "services produced in the United
10 States" includes, but is not limited to accounting,
11 amusement, architectural, automatic data processing,
12 business, communications, construction franchising and
13 licensing, consulting, engineering, financial, insurance,
14 legal, management, repair, tourism, training, and
15 transportation services, not less than 50 per centum of
16 the sales or billings of which is provided by United
17 States citizens or is otherwise attributable to the
18 United States;

19 (4) the term "export trade services" includes, but
20 is not limited to, consulting, international market
21 research, advertising, marketing, insurance, product
22 research and design, legal assistance, transportation,
23 including trade documentation and freight forwarding,
24 communication and processing of foreign orders to and
25 for exporters and foreign purchasers, warehousing,

1 foreign exchange, and financing when provided in order
2 to facilitate the export of goods or services produced in
3 the United States;

4 (5) the term "export trading company" means a
5 company which does business under the laws of the
6 United States or any State and which is organized and
7 operated principally for the purposes of—

8 (A) exporting goods or services produced in
9 the United States; and

10 (B) facilitating the exportation of goods and
11 services produced in the United States by unaffil-
12 iated persons by providing one or more export
13 trade services;

14 (6) the term "United States" means the several
15 States of the United States, the District of Columbia,
16 the Commonwealth of Puerto Rico, the Virgin Islands,
17 American Samoa, Guam, the Commonwealth of the
18 Northern Mariana Islands, and the Trust Territory of
19 the Pacific Islands;

20 (7) the term "Secretary" means the Secretary of
21 Commerce; and

22 (8) the term "company" means any corporation,
23 partnership, association, or similar organization.

24 (b) The Secretary is authorized, by regulation, to further
25 define such terms consistent with this section.

1 FUNCTIONS OF THE SECRETARY OF COMMERCE

2 SEC. 104. The Secretary shall promote and encourage
3 the formation and operation of export trading companies by
4 providing information and advice to interested persons and by
5 facilitating contact between producers of exportable goods
6 and services and firms offering export trade services.

7 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
8 BANK HOLDING COMPANIES, AND INTERNATIONAL
9 BANKING CORPORATIONS

10 SEC. 105. (a) For the purpose of this section—

11 (1) the term “banking organization” means any
12 State bank, national bank, Federal savings bank, bank-
13 ers’ bank, bank holding company, Edge Act Corpora-
14 tion, or Agreement Corporation;

15 (2) the term “State bank” means any bank which
16 is incorporated under the laws of any State, any terri-
17 tory of the United States, the Commonwealth of
18 Puerto Rico, Guam, American Samoa, the Common-
19 wealth of the Northern Mariana Islands, or the Virgin
20 Islands, or any bank (except a national bank) which is
21 operating under the Code of Law for the District of
22 Columbia (hereinafter referred to as a “District bank”);

23 (3) the term “State member bank” means any
24 State bank, including a bankers’ bank, which is a
25 member of the Federal Reserve System;

1 (4) the term "State nonmember insured bank"
2 means any State bank, including a bankers' bank,
3 which is not a member of the Federal Reserve System,
4 but the deposits of which are insured by the Federal
5 Deposit Insurance Corporation;

6 (5) the term "bankers' bank" means any bank
7 which (A) is organized solely to do business with other
8 financial institutions, (B) is owned primarily by the fi-
9 nancial institutions with which it does business, and (C)
10 does not do business with the general public;

11 (6) the term "bank holding company" has the
12 same meaning as in the Bank Holding Company Act of
13 1956;

14 (7) the term "Edge Act Corporation" means a
15 corporation organized under section 25(a) of the Fed-
16 eral Reserve Act;

17 (8) the term "Agreement Corporation" means a
18 corporation operating subject to section 25 of the Fed-
19 eral Reserve Act;

20 (9) the term "appropriate Federal banking
21 agency" means—

22 (A) the Comptroller of the Currency with re-
23 spect to a national bank or any District bank;

24 (B) the Board of Governors of the Federal
25 Reserve System with respect to a State member

1 bank, bank holding company, Edge Act Corpora-
2 tion, or Agreement Corporation;

3 (C) the Federal Deposit Insurance Corpora-
4 tion with respect to a State nonmember insured
5 bank except a District bank; and

6 (D) the Federal Home Loan Bank Board
7 with respect to a Federal savings bank.

8 In any situation where the banking organization hold-
9 ing or making an investment in an export trading com-
10 pany is a subsidiary of another banking organization
11 which is subject to the jurisdiction of another agency,
12 and some form of agency approval or notification is
13 required, such approval or notification need only be ob-
14 tained from or made to, as the case may be, the appro-
15 priate Federal banking agency for the banking organi-
16 zation making or holding the investment in the export
17 trading company;

18 (10) the term "capital and surplus" means paid in
19 and unimpaired capital and surplus, and includes un-
20 divided profits and such other items as the appropriate
21 Federal banking agency may deem appropriate;

22 (11) an "affiliate" of a banking organization or
23 export trading company is a person who controls, is
24 controlled by, or is under common control with such
25 banking organization or export trading company;

(12) the terms “control” and “subsidiary” shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms “controlled” and “controlling” shall be construed consistently with the term “control” as defined in section 2 of the Bank Holding Company Act of 1956; and

(13) the term “export trading company” has the same meaning as in section 103(5) of this Act, or means any company organized and operating principally for the purpose of providing export trade services, as defined in section 103(4) of this Act.

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any other law, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of \$10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal

1 banking agency, if such investment does not cause an
2 export trading company to become a subsidiary of the
3 investing banking organization; and

4 (B) make investments in excess of an aggregate
5 amount of \$10,000,000 in one or more export trading
6 companies, or make any investment or take any other
7 action which causes an export trading company to
8 become a subsidiary of the investing banking organiza-
9 tion or which will cause more than 50 per centum of
10 the voting stock of an export trading company to be
11 owned or controlled by banking organizations, only
12 with the prior approval of the appropriate Federal
13 banking agency.

14 Any banking organization which makes an investment under
15 authority of clause (A) of the preceding sentence shall
16 promptly notify the appropriate Federal banking agency of
17 such investment and shall file such reports on such invest-
18 ment as such agency may require. If, after receipt of any
19 such notification, the appropriate Federal banking agency de-
20 termines, after notice and opportunity for hearing, that the
21 export trading company is a subsidiary of the investing bank-
22 ing organization, it shall have authority to disapprove the
23 investment or impose conditions on such investment under
24 authority of subsection (d). In furtherance of such authority,
25 the appropriate Federal banking agency may require divesti-

1 ture of any voting stock or other evidences of ownership pre-
2 viously acquired, and may impose conditions necessary for
3 the termination of any controlling relationship.

4 (2) If a banking organization proposes to make any in-
5 vestment or engage in any activity included within the fol-
6 lowing two subparagraphs, it must give the appropriate Fed-
7 eral banking agency sixty days prior written notice before it
8 makes such investment or engages in such activity:

9 (A) any additional investment in an export trading
10 company subsidiary; or

11 (B) the engagement by any export trading
12 company subsidiary in any line of activity, including
13 specifically the taking of title to goods, wares, mer-
14 chandise, or commodities, if such activity was not dis-
15 closed in any prior application for approval.

16 During the notification period provided under this paragraph,
17 the appropriate Federal banking agency may, by written
18 notice, disapprove the proposed investment or activity or
19 impose conditions on such investment or activity under au-
20 thority of subsection (d). An additional investment or activity
21 covered by this paragraph may be made or engaged in, as the
22 case may be, prior to the expiration of the notification period
23 if the appropriate Federal banking agency issues written
24 notice of its intent not to disapprove.

1 (3) In the event of the failure of the appropriate Federal
2 banking agency to act on any application for approval under
3 paragraph (1)(B) of this subsection within the ninety-day
4 period which begins on the date the application has been ac-
5 cepted for processing by the appropriate Federal banking
6 agency, the application shall be deemed to have been
7 granted. In the event of the failure of the appropriate Federal
8 banking agency either to disapprove or to impose conditions
9 on any investment or activity subject to the prior notification
10 requirements of paragraph (2) of this subsection within the
11 sixty-day period provided therein, such period beginning on
12 the date the notification has been received by the appropriate
13 Federal banking agency, such investment or activity may be
14 made or engaged in, as the case may be, any time after the
15 expiration of such period.

16 (c) The following limitations apply to export trading
17 companies and the investments in such companies by banking
18 organizations:

19 (1) The name of any export trading company shall
20 not be similar in any respect to that of a banking orga-
21 nization that owns any of its voting stock or other evi-
22 dences of ownership.

23 (2) The total historical cost of the direct and indi-
24 rect investments by a banking organization in an
25 export trading company combined with extensions of

1 credit by the banking organization and its direct and
2 indirect subsidiaries to such export trading company
3 shall not exceed 10 per centum of the banking organi-
4 zation's capital and surplus.

5 (3) A banking organization that owns any voting
6 stock or other evidences of ownership of an export
7 trading company shall terminate its ownership of such
8 stock if the export trading company takes positions in
9 commodities or commodities contracts other than as
10 may be necessary in the course of its business oper-
11 ations.

12 (4) No banking organization holding voting stock
13 or other evidences of ownership of any export trading
14 company may extend credit or cause any affiliate to
15 extend credit to any export trading company or to cus-
16 tomers of such company on terms more favorable than
17 those afforded similar borrowers in similar circum-
18 stances, and such extension of credit shall not involve
19 more than the normal risk of repayment or present
20 other unfavorable features.

21 (d)(1) In the case of every application under subsection
22 (b)(1)(B) of this section, the appropriate Federal banking
23 agency shall take into consideration the financial and man-
24 agerial resources, competitive situation, and future prospects
25 of the banking organization and export trading company con-

1 cerned, and the benefits of the proposal to United States
2 business, industrial, and agricultural concerns, and to improv-
3 ing United States competitiveness in world markets. The
4 appropriate Federal banking agency may not approve any
5 investment for which an application has been filed under
6 subsection (b)(1)(B) if it finds that the export benefits of such
7 proposal are outweighed in the public interest by any adverse
8 financial, managerial, competitive, or other banking factors
9 associated with the particular investment. Any disapproval
10 order issued under this section must contain a statement of
11 the reasons for disapproval.

12 (2) In approving any application submitted under sub-
13 section (b)(1)(B), the appropriate Federal banking agency
14 may impose such conditions which, under the circumstances
15 of such case, it may deem necessary (A) to limit a banking
16 organization's financial exposure to an export trading compa-
17 ny, or (B) to prevent possible conflicts of interest or unsafe or
18 unsound banking practices. With respect to the taking of title
19 to goods, wares, merchandise, or commodities by any export
20 trading company subsidiary of a banking organization, the
21 appropriate Federal banking agencies shall establish stand-
22 ards designed to ensure against any unsafe or unsound prac-
23 tices that could adversely affect a controlling banking organi-
24 zation investor, including specifically practices pertaining to
25 an export trading company subsidiary's holding of title to in-

1 ventory. Such standards should be established no later than
2 two hundred and seventy days after enactment of this Act,
3 and opportunity should be provided for public comment and
4 participation in developing such standards. If an export trad-
5 ing company subsidiary of a banking organization proposes to
6 take title to goods, wares, merchandise, or commodities in a
7 manner which does not conform to such standards, or prior to
8 the establishment of such standards, it may only do so with
9 the prior approval of the appropriate Federal banking agency
10 and subject to such conditions and limitations as it may
11 impose under this paragraph.

12 (3) In determining whether to impose any condition
13 under the preceding paragraph (2), or in imposing such condi-
14 tion, the appropriate Federal banking agency must give due
15 consideration to the size of the banking organization and
16 export trading company involved, the degree of investment
17 and other support to be provided by the banking organization
18 to the export trading company, and the identity, character,
19 and financial strength of any other investors in the export
20 trading company. The appropriate Federal banking agency
21 shall not impose any conditions or set standards for the
22 taking of title which unnecessarily disadvantage, restrict or
23 limit export trading companies in competing in world markets
24 or in achieving the purposes of section 102 of this Act. In
25 particular, in setting standards for the taking of title under

1 the preceding paragraph (2), the appropriate Federal banking
2 agencies shall give special weight to the need to take title in
3 certain kinds of trade transactions, such as international
4 barter transactions.

5 (4) Notwithstanding any other provision of this Act, the
6 appropriate Federal banking agency may, whenever it has
7 reasonable cause to believe that the ownership or control of
8 any investment in an export trading company constitutes a
9 serious risk to the financial safety, soundness, or stability of
10 the banking organization and is inconsistent with sound bank-
11 ing principles or with the purposes of this Act or with the
12 Financial Institutions Supervisory Act of 1966, order the
13 banking organization, after due notice and opportunity for
14 hearing, to terminate (within one hundred and twenty days or
15 such longer period as the Board may direct in unusual cir-
16 cumstances) its investment in the export trading company.

17 (5) On or before two years after enactment of this Act,
18 the appropriate Federal banking agencies shall jointly report
19 to the Committee on Banking, Housing, and Urban Affairs of
20 the Senate and the Committee on Banking, Finance and
21 Urban Affairs of the House of Representatives their recom-
22 mendations with respect to the implementation of this sec-
23 tion, their recommendations on any changes in United States
24 law to facilitate the financing of United States exports, espe-
25 cially by smaller and medium-sized business concerns, and

1 their recommendations on the effects of ownership of United
2 States banks by foreign banking organizations affiliated with
3 trading companies doing business in the United States.

4 (e) Any party aggrieved by an order of an appropriate
5 Federal banking agency under this section may obtain a
6 review of such order in the United States court of appeals
7 within any circuit wherein such organization has its principal
8 place of business, or in the court of appeals for the District of
9 Columbia Circuit, by filing a notice of appeal in such court
10 within thirty days from the date of such order, and simulta-
11 neously sending a copy of such notice by registered or certi-
12 fied mail to the appropriate Federal banking agency. The ap-
13 propriate Federal banking agency shall promptly certify and
14 file in such court the record upon which the order was based.
15 The court shall set aside any order found to be (A) arbitrary,
16 capricious, an abuse of discretion, or otherwise not in accord-
17 ance with law; (B) contrary to constitutional right, power,
18 privilege or immunity; or, (C) in excess of statutory jurisdic-
19 tion, authority, or limitations, or short of statutory right; or
20 (D) without observance of procedure required by law. Except
21 for violations of subsection (b)(3) of this section, the court
22 shall remand for further consideration by the appropriate
23 Federal banking agency any order set aside solely for proce-
24 dural errors and may remand for further consideration by the
25 appropriate Federal banking agency any order set aside for

1 substantive errors. Upon remand, the appropriate Federal
2 banking agency shall have no more than sixty days from date
3 of issuance of the court's order to cure any procedural error
4 or reconsider its prior order. If the agency fails to act within
5 this period, the application or other matter subject to review
6 shall be deemed to have been granted as a matter of law.

7 (f)(1) The appropriate Federal banking agencies are au-
8 thorized and empowered to issue such rules, regulations, and
9 orders, to require such reports, to delegate such functions,
10 and to conduct such examinations of subsidiary export trad-
11 ing companies, as each of them may deem necessary in order
12 to perform their respective duties and functions under this
13 section and to administer and carry out the provisions and
14 purposes of this section and prevent evasions thereof.

15 (2) In addition to any powers, remedies, or sanctions
16 otherwise provided by law, compliance with the requirements
17 imposed under this section may be enforced under section 8
18 of the Federal Deposit Insurance Act by any appropriate
19 Federal banking agency defined in that Act.

20 INITIAL INVESTMENTS AND OPERATING EXPENSES

21 SEC. 106. (a) The Economic Development Administra-
22 tion and the Small Business Administration are directed, in
23 their consideration of applications by export trading compa-
24 nies for loans and guarantees, including applications to make
25 new investments related to the export of goods or services

1 produced in the United States and to meet operating ex-
2 penses, to give special weight to export-related benefits, in-
3 cluding opening new markets for United States goods and
4 services abroad and encouraging the involvement of small or
5 medium-size businesses or agricultural concerns in the export
6 market.

7 (b) There are authorized to be appropriated as necessary
8 to meet the purposes of this section, \$20,000,000 for each
9 fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts
10 appropriated pursuant to the authority of this subsection shall
11 be in addition to amounts appropriated under the authority of
12 other Acts.

13 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
14 INVENTORY

15 SEC. 107. The Export-Import Bank of the United
16 States is authorized and directed to establish a program to
17 provide guarantees for loans extended by financial institu-
18 tions or other private creditors to export trading companies
19 as defined in section 103(5) of this Act, or to other exporters,
20 when such loans are secured by export accounts receivable or
21 inventories of exportable goods, and when in the judgment of
22 the Board of Directors—

23 (1) the private credit market is not providing ade-
24 quate financing to enable otherwise creditworthy

1 export trading companies or exporters to consummate
2 export transactions; and

3 (2) such guarantees would facilitate expansion of
4 exports which would not otherwise occur.

5 Guarantees provided under the authority of this section shall
6 be subject to limitations contained in annual appropriations
7 Acts.

8 TITLE II—EXPORT TRADE ASSOCIATIONS

9 SHORT TITLE

10 SEC. 201. This title may be cited as the “Export Trade
11 Association Act of 1980”.

12 FINDINGS; DECLARATION OF PURPOSE

13 SEC. 202. (a) FINDINGS.—The Congress finds and de-
14 clares that—

15 (1) the exports of the American economy are re-
16 sponsible for creating and maintaining one out of every
17 nine manufacturing jobs in the United States and for
18 generating one out of every \$7 of total United States
19 goods produced;

20 (2) exports will play an even larger role in the
21 United States economy in the future in the face of
22 severe competition from foreign government-owned and
23 subsidized commercial entities;

1 (3) between 1968 and 1977 the United States
2 share of total world exports fell from 19 per centum to
3 13 per centum;

4 (4) trade deficits contribute to the decline of the
5 dollar on international currency markets, fueling infla-
6 tion at home;

7 (5) service-related industries are vital to the well-
8 being of the American economy inasmuch as they
9 create jobs for seven out of every ten Americans, pro-
10 vide 65 per centum of the Nation's gross national
11 product, and represent a small but rapidly rising per-
12 centage of United States international trade;

13 (6) small and medium-sized firms are prime bene-
14 ficiaries of joint exporting, through pooling of technical
15 expertise, help in achieving economies of scale, and
16 assistance in competing effectively in foreign markets;
17 and

18 (7) the Department of Commerce has as one of its
19 responsibilities the development and promotion of
20 United States exports.

21 (b) PURPOSE.—It is the purpose of this Act to encour-
22 age American exports by establishing an office within the
23 Department of Commerce to encourage and promote the
24 formation of export trade associations through the Webb-
25 Pomerene Act, by making the provisions of that Act explic-

1 itly applicable to the exportation of services, and by transfer-
 2 ring the responsibility for administering that Act from the
 3 Federal Trade Commission to the Secretary of Commerce.

4 DEFINITIONS

5 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61-66)
 6 is amended by striking out the first section (15 U.S.C. 61)
 7 and inserting in lieu thereof the following:

8 "SECTION 1. DEFINITIONS.

9 "As used in this Act—

10 "(1) EXPORT TRADE.—The term 'export trade'
 11 means trade or commerce in goods, wares, merchan-
 12 dise, or services exported, or in the course of being ex-
 13 ported from the United States or any territory thereof
 14 to any foreign nation.

15 "(2) SERVICE.—The term 'service' means intangi-
 16 ble economic output, including, but not limited to—

17 "(A) business, repair, and amusement
 18 services;

19 "(B) management, legal, engineering, archi-
 20 tectural, and other professional services; and

21 "(C) financial, insurance, transportation, and
 22 communication services.

23 "(3) EXPORT TRADE ACTIVITIES.—The term
 24 'export trade activities' includes activities or agree-
 25 ments in the course of export trade.

1 “(4) TRADE WITHIN THE UNITED STATES.—The
2 term ‘trade within the United States’ whenever used in
3 this Act means trade or commerce among the several
4 States or in any territory of the United States, or in
5 the District of Columbia, or between any such territory
6 and another, or between any such territory or territo-
7 ries and any State or States or the District of Colum-
8 bia, or between the District of Columbia and any State
9 or States.

10 “(5) ASSOCIATION.—The term ‘association’
11 means any combination, by contract or other arrange-
12 ment, of persons who are citizens of the United States,
13 partnerships which are created under and exist pursu-
14 ant to the laws of any State or of the United States, or
15 corporations which are created under and exist pursu-
16 ant to the laws of any State or of the United States.

17 “(6) EXPORT TRADING COMPANY.—The term
18 ‘export trading company’ means an export trading
19 company as defined in section 103(5) of the Export
20 Trading Company Act of 1980.

21 “(7) ANTITRUST LAWS.—The term ‘antitrust
22 laws’ means the antitrust laws defined in the first sec-
23 tion of the Clayton Act (15 U.S.C. 12) and section 4
24 of the Federal Trade Commission Act (15 U.S.C. 44),
25 and any State antitrust or unfair competition law.

1 “(8) SECRETARY.—The term ‘Secretary’ means
2 the Secretary of Commerce.

3 “(9) ATTORNEY GENERAL.—The term ‘Attorney
4 General’ means the Attorney General of the United
5 States.

6 “(10) COMMISSION.—The term ‘Commission’
7 means the Federal Trade Commission.”.

8 ANTITRUST EXEMPTION

9 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66)
10 is amended by striking out section 2 (15 U.S.C. 62) and
11 inserting in lieu thereof the following:

12 “SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

13 “(a) ELIGIBILITY.—The export trade, export trade ac-
14 tivities, and methods of operation of any association, entered
15 into for the sole purpose of engaging in export trade, and
16 engaged in or proposed to be engaged in such export trade,
17 and the export trade and methods of operation of any export
18 trading company, that—

19 “(1) serve to preserve or promote export trade;

20 “(2) result in neither a substantial lessening of
21 competition or restraint of trade within the United
22 States nor a substantial restraint of the export trade of
23 any competitor of such association;

24 “(3) do not unreasonably enhance, stabilize, or de-
25 press prices within the United States of the goods,

1 wares, merchandise, or services of the class exported
2 by such association;

3 “(4) do not constitute unfair methods of competi-
4 tion against competitors engaged in the export trade of
5 goods, wares, merchandise, or services of the class ex-
6 ported by such association;

7 “(5) do not include any act which results, or may
8 reasonably be expected to result, in the sale for con-
9 sumption or resale within the United States of the
10 goods, wares, merchandise, or services exported by the
11 association or export trading company or its members;
12 and

13 “(6) do not constitute trade or commerce in the
14 licensing of patents, technology, trademarks, or know-
15 how, except as incidental to the sale of the goods,
16 wares, merchandise, or services exported by the associ-
17 ation or export trading company or its members

18 shall, when certified according to the procedures set forth in
19 this Act, be eligible for the exemption provided in subsection
20 (b).

21 “(b) EXEMPTION.—An association or an export trading
22 company and its members with respect to its export trade,
23 export trade activities and methods of operation are exempt
24 from the operation of the antitrust laws as relates to their
25 respective export trade, export trade activities or methods of

1 operation that are specified in a certificate issued according
2 to the procedures set forth in the Act, carried out in conform-
3 ity with the provisions, terms, and conditions prescribed in
4 such certificate and engaged in during the period in which
5 such certificate is in effect. The subsequent revocation or in-
6 validation of such certificate shall not render the association
7 or its members or an export trading company or its members,
8 liable under the antitrust laws for such trade, export trade
9 activities, or methods of operation engaged in during such
10 period.

11 “(c) DISAGREEMENT OF ATTORNEY GENERAL OR
12 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
13 Act, the Attorney General or Commission has formally ad-
14 vised the Secretary of disagreement with his determination to
15 issue a proposed certificate, and the Secretary has nonethe-
16 less issued such proposed certificate or an amended certifi-
17 cate, the exemption provided by this section shall not be
18 effective until thirty days after the issuance of such
19 certificate.”.

20 AMENDMENT OF SECTION 3

21 SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The
22 Webb-Pomerene Act (15 U.S.C. 61–66) is amended—

23 (1) by inserting immediately before section 3 (15
24 U.S.C. 63) the following:

1 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
 2 ATIONS PERMITTED.",

3 (2) by striking out "SEC. 3. That nothing" in sec-
 4 tion 3 and inserting in lieu thereof "Nothing".

5 ADMINISTRATION: ENFORCEMENT: REPORTS

6 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
 7 (15 U.S.C. 61-66) is amended by striking out sections 4 and
 8 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
 9 following sections:

10 "SEC. 4. CERTIFICATION.

11 "(a) PROCEDURE FOR APPLICATION.—Any associ-
 12 ation, company, or export trading company seeking certifica-
 13 tion under this Act shall file with the Secretary a written
 14 application for certification setting forth the following:

15 "(1) The name of the association or export trad-
 16 ing company.

17 "(2) The location of all of the offices or places of
 18 business of the association or export trading company
 19 in the United States and abroad.

20 "(3) The names and addresses of all of the offi-
 21 cers, stockholders, and members of the association or
 22 export trading company.

23 "(4) A copy of the certificate or articles of incor-
 24 poration and bylaws, if the association or export trad-
 25 ing company is a corporation; or a copy of the articles,
 26 partnership, joint venture, or other agreement or con-

1 tract under which the association conducts or proposes
2 to conduct its export trade activities or contract of as-
3 sociation, if the association is unincorporated.

4 “(5) A description of the goods, wares, merchan-
5 dise, or services which the association or export trad-
6 ing company or their members export or propose to
7 export.

8 “(6) A description of the domestic and interna-
9 tional conditions, circumstances, and factors which
10 show that the association or export trading company
11 and its activities will serve a specified need in promot-
12 ing the export trade of the described goods, wares,
13 merchandise, or services.

14 “(7) The export trade activities in which the asso-
15 ciation or export trading company intends to engage
16 and the methods by which the association or export
17 trading company conducts or proposes to conduct
18 export trade in the described goods, wares, merchan-
19 dise, or services, including, but not limited to, any
20 agreements to sell exclusively to or through the associ-
21 ation, any agreements with foreign persons who may
22 act as joint selling agents, any agreements to acquire a
23 foreign selling agent, any agreements for pooling tangi-
24 ble or intangible property or resources, or any territo-
25 rial, price-maintenance, membership, or other restric-

1 tions to be imposed upon members of the association or
2 export trading company.

3 “(8) The names of all countries where export
4 trade in the described goods, wares, merchandise, or
5 services is conducted or proposed to be conducted by
6 or through the association or export trading company.

7 “(9) Any other information which the Secretary
8 may request concerning the organization, operation,
9 management, or finances of the association or export
10 trading company; the relation of the association or
11 export trading company to other associations, corpora-
12 tions, partnerships, and individuals; and competition or
13 potential competition, and effects of the association or
14 export trading company thereon. The Secretary may
15 request such information as part of an initial applica-
16 tion or as a necessary supplement thereto. The Secre-
17 tary may not request information under this paragraph
18 which is not reasonably available to the person making
19 application or which is not necessary for certification of
20 the prospective association or export trading company.

21 “(b) ISSUANCE OF CERTIFICATE.—

22 “(1) NINETY-DAY PERIOD.—The Secretary shall
23 issue a certificate to an association or export trading
24 company within ninety days after receiving the applica-
25 tion for certification or necessary supplement thereto if

1 the Secretary, after consultation with the Attorney
2 General and Commission, determines that the associ-
3 ation, its export trade, export trade activities and
4 methods of operation, or export trading company, and
5 its export trade, export trade activities and methods of
6 operation meet the requirements of section 2 of this
7 Act and that the association or export trading company
8 and its activities will serve a specified need in promot-
9 ing the export trade of the goods, wares, merchandise,
10 or services described in the application for certification.
11 The certificate shall specify the permissible export
12 trade, export trade activities and methods of operation
13 of the association or export trading company and shall
14 include any terms and conditions the Secretary deems
15 necessary to comply with the requirements of section 2
16 of this Act. The Secretary shall deliver to the Attorney
17 General and the Commission a copy of any certificate
18 that he proposes to issue. The Attorney General or
19 Commission may, within fifteen days thereafter, give
20 written notice to the Secretary of an intent to offer
21 advice on the determination. The Attorney General or
22 Commission may, after giving such written notice and
23 within forty-five days of the time the Secretary has de-
24 livered a copy of a proposed certificate, formally advise
25 the Secretary of disagreement with his determination.

1 The Secretary shall not issue any certificate prior to
2 the expiration of such forty-five day period unless he
3 has (A) received no notice of intent to offer advice by
4 the Attorney General or the Commission within fifteen
5 days after delivering a copy of a proposed certificate,
6 or (B) received any notice and formal advice of dis-
7 agreement or written confirmation that no formal dis-
8 agreement will be transmitted from the Attorney Gen-
9 eral and the Commission. After the forty-five day
10 period or, if no notice of intent to offer advice has been
11 given, after the fifteen-day period, the Secretary shall
12 either issue the proposed certificate, issue an amended
13 certificate, or deny the application. Upon agreement of
14 the applicant, the Secretary may delay taking action
15 for not more than thirty additional days after the forty-
16 five day period. Before offering advice on a proposed
17 certification, the Attorney General and Commission
18 shall consult in an effort to avoid, wherever possible,
19 having both agencies offer advice on any application.

20 “(2) EXPEDITED CERTIFICATION.—In those in-
21 stances where the temporary nature of the export trade
22 activities, deadlines for bidding on contracts or filling
23 orders, or any other circumstances beyond the control
24 of the association or export trading company which
25 have a significant impact on its export trade, make the

1 90-day period for application approval described in
2 paragraph (1) of this subsection, or an amended appli-
3 cation approval as provided in subsection (c) of this
4 section, impractical for the association or export trad-
5 ing company seeking certification, such association or
6 export trading company may request and may receive
7 expedited action on its application for certification.

8 “(3) APPEAL OF DETERMINATION.—If the Secre-
9 tary determines not to issue a certificate to an associ-
10 ation or export trading company which has submitted
11 an application or an amended application for certifica-
12 tion, then he shall—

13 “(A) notify the association or export trading
14 company of his determination and the reasons for
15 his determination, and

16 “(B) upon request made by the association or
17 export trading company afford it an opportunity
18 for a hearing with respect to that determination in
19 accordance with section 557 of title 5, United
20 States Code.

21 “(c) MATERIAL CHANGES IN CIRCUMSTANCES;
22 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
23 terial change in the membership, export trade, export trade
24 activities, or methods of operation, of an association or export
25 trading company then it shall report such change to the Sec-

1 retary and may apply to the Secretary for an amendment of
2 its certificate. Any application for an amendment to a certifi-
3 cate shall set forth the requested amendment of the certifi-
4 cate and the reasons for the requested amendment. Any re-
5 quest for the amendment of a certificate shall be treated in
6 the same manner as an original application for a certificate.
7 If the request is filed within thirty days after a material
8 change which requires the amendment, and if the requested
9 amendment is approved, then there shall be no interruption in
10 the period for which the certificate is in effect.

11 “(d) AMENDMENT OR REVOCATION OF CERTIFICATE
12 BY SECRETARY.—After notifying the association or export
13 trading company involved and after an opportunity for hear-
14 ing pursuant to section 554 of title 5, United States Code,
15 the Secretary, on his own initiative—

16 “(1) may require that the organization or oper-
17 ation of the association or export trading company be
18 modified to correspond with its certification, or

19 “(2) shall, upon a determination that the export
20 trade, export trade activities or methods of operation of
21 the association or export trading company no longer
22 meet the requirements of section 2 of this Act, revoke
23 the certificate or make such amendments as may be
24 necessary to satisfy the requirements of such section.

1 “(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
2 ATTORNEY GENERAL OR CHAIRMAN—

3 “(1) The Attorney General or the Commission
4 may bring an action against an association or export
5 trading company or its members to invalidate, in whole
6 or in part, the certification on the ground that the
7 export trade, export trade activities or methods of op-
8 eration of the association or export trading company
9 fail or have failed, to meet the requirements of section
10 2 of this Act. The Attorney General or Commission
11 shall notify any association or export trading company
12 or member thereof, against which it intends to bring an
13 action for revocation, thirty days in advance, as to its
14 intent to file an action under this subsection. The dis-
15 trict court shall consider any issues presented in any
16 such action de novo and if it finds that the require-
17 ments of section 2 are not met, it shall issue an order
18 declaring the certificate invalid and any other order
19 necessary to effectuate the purposes of this Act and
20 the requirements of section 2.

21 “(2) Any action brought under this subsection
22 shall be considered an action described in section 1337
23 of title 28, United States Code. Pending any such
24 action which was brought during the period any ex-
25 emption is held in abeyance pursuant to section 2(c) of

1 this Act, the court may make such temporary restrain-
2 ing order or prohibition as shall be deemed just in the
3 premises.

4 “(3) No person other than the Attorney General
5 or Commission shall have standing to bring an action
6 against an association or export trading company or
7 their respective members for failure of the association
8 or export trading company or their respective export
9 trade, export trade activities or methods of operation to
10 meet the criteria of section 2 of this Act.

11 “SEC. 5. GUIDELINES.

12 “(a) INITIAL PROPOSED GUIDELINES.—Within ninety
13 days after the enactment of the Export Trade Association
14 Act of 1980, the Secretary, after consultation with the Attor-
15 ney General, and the Commission shall publish proposed
16 guidelines for purposes of determining whether export trade,
17 export trade activities and methods of operation of an associ-
18 ation or export trading company will meet the requirements
19 of section 2 of this Act.

20 “(b) PUBLIC COMMENT PERIOD.—Following publica-
21 tion of the proposed guidelines, and any proposed revision of
22 guidelines, interested parties shall have thirty days to com-
23 ment on the proposed guidelines. The Secretary shall review
24 the comments and, after consultation with the Attorney Gen-
25 eral, and Commission, publish final guidelines within thirty

1 days after the last day on which comments may be made
2 under the preceding sentence.

3 “(c) PERIODIC REVISION.—After publication of the
4 final guidelines, the Secretary shall periodically review the
5 guidelines and, after consultation with the Attorney General,
6 and the Commission, propose revisions as needed.

7 “(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
8 ACT.—The promulgation of guidelines under this section
9 shall not be considered rulemaking for purposes of subchapter
10 II of chapter 5 of title 5, United States Code, and section
11 553 of such title shall not apply to their promulgation.

12 “SEC. 6. ANNUAL REPORTS.

13 “Every certified association or export trading company
14 shall submit to the Secretary an annual report, in such form
15 and at such time as he may require, which report updates
16 where necessary the information described by section 4(a) of
17 this Act.

18 “SEC. 7. OFFICE OF EXPORT TRADE IN COMMERCE
19 DEPARTMENT.

20 “The Secretary shall establish within the Department of
21 Commerce an office to promote and encourage to the great-
22 est extent feasible the formation of export trade associations
23 and export trading companies through the use of provisions of
24 this Act in a manner consistent with this Act.

1 "SEC. 8. AUTOMATIC CERTIFICATION FOR EXISTING
2 ASSOCIATIONS.

3 "The Secretary shall certify any export trade associ-
4 ation registered with the Federal Trade Commission as of
5 April 3, 1980, if such association, within one hundred and
6 eighty days after the date of enactment of such Act, files with
7 the Secretary an application for certification as provided for
8 in section 5 of this Act, unless such application shows on its
9 face that the association is not eligible for certification under
10 this Act.

11 "SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL
12 REPORT INFORMATION.

13 "(a) GENERAL RULE.—Portions of applications made
14 under section 4, including amendments to such applications,
15 and annual reports made under section 6 that contain trade
16 secrets or confidential business or financial information, the
17 disclosure of which would harm the competitive position of
18 the person submitting such information shall be confidential,
19 and, except as authorized by this section, no officer or em-
20 ployee, or former officer or employee, of the United States
21 shall disclose any such confidential information, obtained by
22 him in any manner in connection with his service as such an
23 officer or employee.

24 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
25 MISSION.—Whenever the Secretary believes that an appli-
26 cant may be eligible for a certificate, or has issued a certifi-

1 cate to an association or export trading company, he shall
2 promptly make available all materials filed by the applicant,
3 association or export trading company, including applications
4 and supplements thereto, reports of material changes, appli-
5 cations for amendments and annual reports, and information
6 derived therefrom. The Secretary shall make available appli-
7 cations, amendments thereto or annual reports, or informa-
8 tion derived therefrom, to the Attorney General or Commis-
9 sion, or any employee or officer thereof, for official use in
10 connection with an investigation or judicial or administrative
11 proceeding under this Act or the antitrust laws to which the
12 United States or the Commission is or may be a party. Such
13 information may only be disclosed by the Secretary upon a
14 prior certification that the information will be maintained in
15 confidence and will only be used for such official law enforce-
16 ment purposes.

17 **"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
18 **UNITED STATES OBLIGATIONS.**

19 "At such time as the United States undertakes binding
20 international obligations by treaty or statute, to the extent
21 that the operations of any export trade association or export
22 trading company, certified under this Act, are inconsistent
23 with such international obligations, the Secretary may re-
24 quire it to modify its operations so as to be consistent with
25 such international obligations.

1 **“SEC. 11. REGULATIONS.**

2 “The Secretary, after consultation with the Attorney
3 General and the Commission, shall promulgate such rules
4 and regulations as may be necessary to carry out the pur-
5 poses of this Act.

6 **“SEC. 12. TASK FORCE STUDY.**

7 “Seven years after the date of enactment of the Export
8 Trade Association Act of 1980, the President shall appoint,
9 by and with the advice and consent of the Senate, a task
10 force to examine the effect of the operation of this Act on
11 domestic competition and on United States international
12 trade and to recommend either continuation, revision, or ter-
13 mination of the Webb-Pomerene Act. The task force shall
14 have one year to conduct its study and to make its recom-
15 mendations to the President.”.

16 (b) **REDESIGNATION OF SECTION 6.**—The Act is
17 amended—

18 (1) by striking out “SEC. 6.” in section 6 (15
19 U.S.C. 66), and

20 (2) by inserting immediately before such section
21 the following:

1 "SEC. 14. SHORT TITLE."

2 TITLE III—TAXATION OF EXPORT TRADING

3 COMPANIES

4 APPLICATION OF DISC RULES TO EXPORT TRADING

5 COMPANIES

6 SEC. 301. (a) Paragraph (3) of section 992(d) of the In-
7 ternal Revenue Code of 1954 (relating to ineligible corpora-
8 tions) is amended by inserting before the comma at the end
9 thereof the following: "(other than a financial institution
10 which is a banking organization as defined in section
11 105(a)(1) of the Export Trading Company Act of 1980 in-
12 vesting in the voting stock of an export trading company (as
13 defined in section 103(5) of the Export Trading Act of 1980)
14 in accordance with the provisions of section 105 of such
15 Act)".

16 (b) Paragraph (1) of section 993(a) of the Internal Reve-
17 nue Code of 1954 (relating to qualified export receipts of a
18 DISC) is amended—

19 (1) by striking out "and" at the end of subpara-
20 graph (G),

21 (2) by striking out the period at the end of sub-
22 paragraph (H) and inserting in lieu thereof "and", and

23 (3) by adding at the end thereof the following new
24 subparagraph:

25 "(I) in the case of a DISC which is an
26 export trading company (as defined in section

1 103(5) of the Export Trading Company Act of
2 1980), or which is a subsidiary of such a compa-
3 ny, gross receipts from the export of services pro-
4 duced in the United States (as defined in section
5 103(3) of such Act) or from export trade services
6 (as defined in section 103(4) of such Act).”.

7 (c) The Secretary of Commerce, after consultation with
8 the Secretary of the Treasury, shall develop, prepare, and
9 distribute to interested parties, including potential exporters,
10 information concerning the manner in which an export trad-
11 ing company can utilize the provisions of part IV of sub-
12 chapter N of chapter 1 of the Internal Revenue Code of 1954
13 (relating to domestic international sales corporations), and
14 any advantages or disadvantages which may reasonably be
15 expected from the election of DISC status or the establish-
16 ment of a subsidiary corporation which is a DISC.

17 (d) The amendments made by this section shall apply
18 with respect to taxable years beginning after December 31,
19 1980.

20 SUBCHAPTER S STATUS FOR EXPORT TRADING

21 COMPANIES

22 SEC. 302. (a) Paragraph (2) of section 1371(a) of the
23 Internal Revenue Code of 1954 (relating to the definition of a
24 small business corporation) is amended by inserting “, except
25 in the case of the shareholders of an export trading company

1 (as defined in section 103(5) of the Export Trading Company
2 Act of 1980) if such shareholders are otherwise small busi-
3 ness corporations for the purpose of this subchapter," after
4 "shareholder".

5 (b) The first sentence of section 1372(e)(4) of such Code
6 (relating to foreign income) is amended by inserting ", other
7 than an export trading company," after "small business
8 corporation".

9 (c) The amendments made by this section shall apply
10 with respect to taxable years beginning after December 31,
11 1980.



(2) exporting requires extensive specialized knowledge and skills and entails costs for which smaller producers cannot realize economies of scale;

(3) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably;

(4) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters); and

(5) the development of export trading companies in the United States has been hampered by Government regulations.

(b) The purpose of this Act is to increase United States exports of products and services by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods or services produced in the United

1 States and exported, or in the course of being ex-
2 ported, from the United States to any foreign nation;

3 (2) the term "goods produced in the United
4 States" means tangible property manufactured, pro-
5 duced, grown, or extracted in the United States, unless
6 they contain imported raw materials and components
7 whose costs exceed 50 per centum of their sales price;

8 (3) the term "services produced in the United
9 States" includes, but is not limited to, accounting,
10 amusement, architectural, automatic data processing,
11 business, communications, construction franchising and
12 licensing, consulting, engineering, financial, insurance,
13 legal, management, repair, tourism, training, and
14 transportation services, not less than 50 per centum of
15 the sales or billings of which is provided by United
16 States citizens or is otherwise attributable to the
17 United States;

18 (4) the term "export trade services" includes, but
19 is not limited to, consulting, international market re-
20 search, advertising, marketing, insurance, product re-
21 search and design, legal assistance, transportation,
22 trade documentation and freight forwarding, communi-
23 cation and processing of foreign orders to and for ex-
24 porters and foreign purchasers, warehousing, foreign
25 exchange, and financing when provided in order to fa-

1 cilitate the export of goods or services produced in the
2 United States;

3 (5) the term "export trading company" means a
4 company which does business under the laws of the
5 United States or any State and which is organized and
6 operated principally for the purposes of—

7 (A) exporting goods or services produced in
8 the United States; and

9 (B) facilitating the exportation of goods and
10 services produced in the United States by unaffil-
11 iated persons by providing one or more export
12 trade services;

13 (6) the term "United States" means the several
14 States of the United States, the District of Columbia,
15 the Commonwealth of Puerto Rico, the Virgin Islands,
16 American Samoa, Guam, the Commonwealth of the
17 Northern Mariana Islands, and the Trust Territory of
18 the Pacific Islands;

19 (7) the term "Secretary" means the Secretary of
20 Commerce; and

21 (8) the term "company" means any corporation,
22 partnership, association, or similar organization.

23 (b) The Secretary is authorized, by regulation, to further
24 define such terms consistent with this section.

1 FUNCTIONS OF THE SECRETARY OF COMMERCE

2 SEC. 104. The Secretary shall promote and encourage
3 the formation and operation of export trading companies by
4 providing information and advice to interested persons and by
5 facilitating contact between producers of exportable goods
6 and services and firms offering export trade services.

7 INITIAL INVESTMENTS AND OPERATING EXPENSES

8 SEC. 105. The Economic Development Administration
9 and the Small Business Administration are directed, in their
10 consideration of applications by export trading companies for
11 loans and guarantees, including applications to make new in-
12 vestments related to the export of goods or services produced
13 in the United States and to meet operating expenses, to give
14 special weight to export-related benefits, including opening
15 new markets for United States goods and services abroad and
16 encouraging the involvement of small or medium-size busi-
17 nesses or agricultural concerns in the export market.

18 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
19 INVENTORY

20 SEC. 106. The Export-Import Bank of the United
21 States is authorized and directed to establish a program to
22 provide guarantees for loans extended by financial institu-
23 tions or other private creditors to export trading companies,
24 as defined in section 103(5) of this Act, when such loans are

1 secured by export accounts receivable, and when in the judg-
 2 ment of the Board of Directors—

3 (1) the private credit market is not providing ade-
 4 quate financing to enable otherwise creditworthy
 5 export trading companies to consummate export trans-
 6 actions; and

7 (2) such guarantees would facilitate expansion of
 8 exports which would not otherwise occur.

9 Guarantees provided under the authority of this section shall
 10 be subject to limitations contained in annual appropriations
 11 Acts.

12 TITLE II—EXPORT TRADE ASSOCIATIONS

13 SHORT TITLE

14 SEC. 201. This title may be cited as the “Export Trade
 15 Association Act of 1980”.

16 FINDINGS; DECLARATION OF PURPOSE

17 SEC. 202. (a) FINDINGS.—The Congress finds and de-
 18 clares that—

19 (1) the exports of the American economy are re-
 20 sponsible for creating and maintaining one out of every
 21 nine manufacturing jobs in the United States and for
 22 generating one out of every seven dollars of total
 23 United States goods produced;

24 (2) exports will play an even larger role in the
 25 United States economy in the future in the face of

1 severe competition from foreign government-owned and
2 subsidized commercial entities;

3 (3) between 1968 and 1977 the United States
4 share of total world exports fell from 19 per centum to
5 13 per centum;

6 (4) service-related industries are vital to the well-
7 being of the American economy inasmuch as they
8 create jobs for seven out of every ten Americans, pro-
9 vide 65 per centum of the Nation's gross national
10 product, and represent a small but rapidly rising per-
11 centage of United States international trade;

12 (5) small and medium-sized firms are prime bene-
13 ficiaries of joint exporting, through pooling of technical
14 expertise, help in achieving economies of scale, and as-
15 sistance in competing effectively in foreign markets;
16 and

17 (6) the Department of Commerce has as one of its
18 responsibilities the development and promotion of
19 United States exports.

20 (b) PURPOSE.—It is the purpose of this Act to encour-
21 age American exports by establishing an office within the
22 Department of Commerce to encourage and promote the for-
23 mation of export trade associations through the Webb-
24 Pomerene Act, by making the provisions of that Act explic-
25 itly applicable to the exportation of services, and by transfer-

3

4 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61-66)
5 is amended by striking out the first section (15 U.S.C. 61)
6 and inserting in lieu thereof the following:

7. "SECTION 1. DEFINITIONS.

8 “As used in this Act—

9 “(1) EXPORT TRADE.—The term ‘export trade’
10 means trade or commerce in goods, wares, merchan-
11 dise, or services exported, or in the course of being ex-
12 ported from the United States or any territory thereof
13 to any foreign nation.

14 “(2) SERVICE.—The term ‘service’ means intangi-
15 ble economic output, including, but not limited to—

16 “(A) business, repair, and amusement
17 services;

“(B) management, legal, engineering, architectural, and other professional services; and

20 “(C) financial, insurance, transportation, and
21 communication services.

22 “(3) EXPORT TRADE ACTIVITIES.—The term
23 ‘export trade activities’ includes activities or agree-
24 ments in the course of export trade.

1 “(4) TRADE WITHIN THE UNITED STATES.—The
2 term ‘trade within the United States’ whenever used in
3 this Act means trade or commerce among the several
4 States or in any territory of the United States, or in
5 the District of Columbia, or between any such territory
6 and another, or between any such territory or territo-
7 ries and any State or States or the District of Colum-
8 bia, or between the District of Columbia and any State
9 or States.

10 “(5) ASSOCIATION.—The term ‘association’
11 means any combination, by contract or other arrange-
12 ment, of persons who are citizens of the United States,
13 partnerships which are created under and exist pursu-
14 ant to the laws of any State or of the United States, or
15 corporations which are created under and exist pursu-
16 ant to the laws of any State or of the United States.

17 “(6) EXPORT TRADING COMPANY.—The term
18 ‘export trading company’ means an export trading
19 company as defined in section 103(5) of the Export
20 Trading Company Act of 1980.

21 “(7) ANTITRUST LAWS.—The term ‘antitrust
22 laws’ means the antitrust laws defined in the first sec-
23 tion of the Clayton Act (15 U.S.C. 12) and section 4
24 of the Federal Trade Commission Act (15 U.S.C. 44),
25 and any State antitrust or unfair competition law.

1 “(8) SECRETARY.—The term ‘Secretary’ means
2 the Secretary of Commerce.

3 “(9) ATTORNEY GENERAL.—The term ‘Attorney
4 General’ means the Attorney General of the United
5 States.

6 “(10) COMMISSION.—The term ‘Commission’
7 means the Federal Trade Commission.”.

8 ANTITRUST EXEMPTION

9 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61-66)
10 is amended by striking out section 2 (15 U.S.C. 62) and in-
11 serting in lieu thereof the following:

12 “SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

13 “(a) ELIGIBILITY.—The export trade, export trade ac-
14 tivities, and methods of operation of any association, entered
15 into for the sole purpose of engaging in export trade, and
16 engaged in or proposed to be engaged in such export trade,
17 and the export trade and methods of operation of any export
18 trading company, that—

19 “(1) serve to preserve or promote export trade;

20 “(2) result in neither a substantial lessening of
21 competition or restraint of trade within the United
22 States nor a substantial restraint of the export trade of
23 any competitor of such association;

24 “(3) do not unreasonably enhance, stabilize, or de-
25 press prices within the United States of the goods,

1 wares, merchandise, or services of the class exported
2 by such association;

3 “(4) do not constitute unfair methods of competi-
4 tion against competitors engaged in the export trade of
5 goods, wares, merchandise, or services of the class ex-
6 ported by such association;

7 “(5) do not include any act which results, or may
8 reasonably be expected to result, in the sale for con-
9 sumption or resale within the United States of the
10 goods, wares, merchandise, or services exported by the
11 association or export trading company or its members;
12 and

13 “(6) do not constitute trade or commerce in the
14 licensing of patents, technology, trademarks, or know-
15 how, except as incidental to the sale of the goods,
16 wares, merchandise, or services exported by the associ-
17 ation or export trading company or its members
18 shall, when certified according to the procedures set forth in
19 this Act, be eligible for the exemption provided in subsection
20 (b).

21 “(b) EXEMPTION.—An association or an export trading
22 company and its members with respect to its export trade,
23 export trade activities and methods of operation are exempt
24 from the operation of the antitrust laws as relates to their
25 respective export trade, export trade activities or methods of

1 operation that are specified in a certificate issued according
2 to the procedures set forth in the Act, carried out in conform-
3 ity with the provisions, terms, and conditions prescribed in
4 such certificate and engaged in during the period in which
5 such certificate is in effect. The subsequent revocation or in-
6 validation of such certificate shall not render the association
7 or its members or an export trading company or its members,
8 liable under the antitrust laws for such trade, export trade
9 activities, or methods of operation engaged in during such
10 period.

11 “(c) DISAGREEMENT OF ATTORNEY GENERAL OR
12 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
13 Act, the Attorney General or Commission has formally ad-
14 vised the Secretary of disagreement with his determination to
15 issue a proposed certificate, and the Secretary has nonethe-
16 less issued such proposed certificate or an amended certifi-
17 cate, the exemption provided by this section shall not be
18 effective until thirty days after the issuance of such
19 certificate.”.

20 AMENDMENT OF SECTION 3

21 SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The
22 Webb-Pomerene Act (15 U.S.C. 61–66) is amended—

23 (1) by inserting immediately before section 3 (15
24 U.S.C. 63) the following:

1 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
 2 ATIONS PERMITTED.",

3 (2) by striking out "SEC. 3. That nothing" in sec-
 4 tion 3 and inserting in lieu thereof "Nothing".

5 ADMINISTRATION: ENFORCEMENT: REPORTS

6 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
 7 (15 U.S.C. 61–66) is amended by striking out sections 4 and
 8 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
 9 following sections:

10 "SEC. 4. CERTIFICATION.

11 "(a) PROCEDURE FOR APPLICATION.—Any associ-
 12 ation, company, or export trading company seeking certifica-
 13 tion under this Act shall file with the Secretary a written
 14 application for certification setting forth the following:

15 "(1) The name of the association or export trad-
 16 ing company.

17 "(2) The location of all of the offices or places of
 18 business of the association or export trading company
 19 in the United States and abroad.

20 "(3) The names and addresses of all of the offi-
 21 cers, stockholders, and members of the association or
 22 export trading company.

23 "(4) A copy of the certificate or articles of incor-
 24 poration and bylaws, if the association or export trad-
 25 ing company is a corporation; or a copy of the articles,
 26 partnership, joint venture, or other agreement or con-

1 tract under which the association conducts or proposes
2 to conduct its export trade activities or contract of as-
3 sociation, if the association is unincorporated.

4 “(5) A description of the goods, wares, merchan-
5 dise, or services which the association or export trad-
6 ing company or their members export or propose to
7 export.

8 “(6) A description of the domestic and interna-
9 tional conditions, circumstances, and factors which
10 show that the association or export trading company
11 and its activities will serve a specified need in promot-
12 ing the export trade of the described goods, wares,
13 merchandise, or services.

14 “(7) The export trade activities in which the asso-
15 ciation or export trading company intends to engage
16 and the methods by which the association or export
17 trading company conducts or proposes to conduct
18 export trade in the described goods, wares, merchan-
19 dise, or services, including, but not limited to, any
20 agreements to sell exclusively to or through the associ-
21 ation, any agreements with foreign persons who may
22 act as joint selling agents, any agreements to acquire a
23 foreign selling agent, any agreements for pooling tangi-
24 ble or intangible property or resources, or any ter-
25 ritorial, price-maintenance, membership, or other

1 restrictions to be imposed upon members of the associ-
2 ation or export trading company.

3 “(8) The names of all countries where export
4 trade in the described goods, wares, merchandise, or
5 services is conducted or proposed to be conducted by
6 or through the association or export trading company.

7 “(9) Any other information which the Secretary
8 may request concerning the organization, operation,
9 management, or finances of the association or export
10 trading company; the relation of the association or
11 export trading company to other associations, corpora-
12 tions, partnerships, and individuals; and competition or
13 potential competition, and effects of the association or
14 export trading company thereon. The Secretary may
15 request such information as part of an initial applica-
16 tion or as a necessary supplement thereto. The Secre-
17 tary may not request information under this paragraph
18 which is not reasonably available to the person making
19 application or which is not necessary for certification of
20 the prospective association or export trading company.

21 “(b) ISSUANCE OF CERTIFICATE.—

22 “(1) NINETY-DAY PERIOD.—The Secretary shall
23 issue a certificate to an association or export trading
24 company within ninety days after receiving the applica-
25 tion for certification or necessary supplement thereto if

1 the Secretary, after consultation with the Attorney
2 General and Commission, determines that the associ-
3 ation, its export trade, export trade activities and
4 methods of operation, or export trading company, and
5 its export trade, export trade activities and methods of
6 operation meet the requirements of section 2 of this
7 Act and that the association or export trading company
8 and its activities will serve a specified need in promot-
9 ing the export trade of the goods, wares, merchandise,
10 or services described in the application for certification.
11 The certificate shall specify the permissible export
12 trade, export trade activities and methods of operation
13 of the association or export trading company and shall
14 include any terms and conditions the Secretary deems
15 necessary to comply with the requirements of section 2
16 of this Act. The Secretary shall deliver to the Attorney
17 General and the Commission a copy of any certificate
18 that he proposes to issue. The Attorney General or
19 Commission may, within fifteen days thereafter, give
20 written notice to the Secretary of an intent to offer
21 advice on the determination. The Attorney General or
22 Commission may, after giving such written notice and
23 within forty-five days of the time the Secretary has de-
24 livered a copy of a proposed certificate, formally advise
25 the Secretary of disagreement with his determination.

1 The Secretary shall not issue any certificate prior to
2 the expiration of such forty-five day period unless he
3 has (A) received no notice of intent to offer advice by
4 the Attorney General or the Commission within fifteen
5 days after delivering a copy of a proposed certificate,
6 or (B) received any notice and formal advice of dis-
7 agreement or written confirmation that no formal dis-
8 agreement will be transmitted from the Attorney Gen-
9 eral and the Commission. After the forty-five day
10 period or, if no notice of intent to offer advice has been
11 given, after the fifteen-day period, the Secretary shall
12 either issue the proposed certificate, issue an amended
13 certificate, or deny the application. Upon agreement of
14 the applicant, the Secretary may delay taking action
15 for not more than thirty additional days after the forty-
16 five day period. Before offering advice on a proposed
17 certification, the Attorney General and Commission
18 shall consult in an effort to avoid, wherever possible,
19 having both agencies offer advice on any application.

20 “(2) EXPEDITED CERTIFICATION.—In those in-
21 stances where the temporary nature of the export trade
22 activities, deadlines for bidding on contracts or filling
23 orders, or any other circumstances beyond the control
24 of the association or export trading company which
25 have a significant impact on its export trade, make the

1 90-day period for application approval described in
2 paragraph (1) of this subsection, or an amended appli-
3 cation approval as provided in subsection (c) of this
4 section, impractical for the association or export trad-
5 ing company seeking certification, such association or
6 export trading company may request and may receive
7 expedited action on its application for certification.

8 “(3) APPEAL OF DETERMINATION.—If the Secre-
9 tary determines not to issue a certificate to an associ-
10 ation or export trading company which has submitted
11 an application or an amended application for certifica-
12 tion, then he shall—

13 “(A) notify the association or export trading
14 company of his determination and the reasons for
15 his determination, and

16 “(B) upon request made by the association or
17 export trading company afford it an opportunity
18 for a hearing with respect to that determination in
19 accordance with section 557 of title 5, United
20 States Code.

21 “(c) MATERIAL CHANGES IN CIRCUMSTANCES;
22 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
23 terial change in the membership, export trade, export trade
24 activities, or methods of operation, of an association or export
25 trading company then it shall report such change to the Sec-

1 retary and may apply to the Secretary for an amendment of
2 its certificate. Any application for an amendment to a certifi-
3 cate shall set forth the requested amendment of the certifi-
4 cate and the reasons for the requested amendment. Any re-
5 quest for the amendment of a certificate shall be treated in
6 the same manner as an original application for a certificate.
7 If the request is filed within thirty days after a material
8 change which requires the amendment, and if the requested
9 amendment is approved, then there shall be no interruption in
10 the period for which the certificate is in effect.

11 “(d) AMENDMENT OR REVOCATION OF CERTIFICATE
12 BY SECRETARY.—After notifying the association or export
13 trading company involved and after an opportunity for hear-
14 ing pursuant to section 554 of title 5, United States Code,
15 the Secretary, on his own initiative—

16 “(1) may require that the organization or oper-
17 ation of the association or export trading company be
18 modified to correspond with its certification, or

19 “(2) shall, upon a determination that the export
20 trade, export trade activities or methods of operation of
21 the association or export trading company no longer
22 meet the requirements of section 2 of this Act, revoke
23 the certificate or make such amendments as may be
24 necessary to satisfy the requirements of such section.

1 “(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
2 ATTORNEY GENERAL OR CHAIRMAN—

3 “(1) The Attorney General or the Commission
4 may bring an action against an association or export
5 trading company or its members to invalidate, in whole
6 or in part, the certification on the ground that the
7 export trade, export trade activities or methods of op-
8 eration of the association or export trading company
9 fail or have failed, to meet the requirements of section
10 2 of this Act. The Attorney General or Commission
11 shall notify any association or export trading company
12 or member thereof, against which it intends to bring an
13 action for revocation, thirty days in advance, as to its
14 intent to file an action under this subsection. The dis-
15 trict court shall consider any issues presented in any
16 such action de novo and if it finds that the require-
17 ments of section 2 are not met, it shall issue an order
18 declaring the certificate invalid and any other order
19 necessary to effectuate the purposes of this Act and
20 the requirements of section 2.

21 “(2) Any action brought under this subsection
22 shall be considered an action described in section 1337
23 of title 28, United States Code. Pending any such
24 action which was brought during the period any ex-
25 emption is held in abeyance pursuant to section 2(c) of

1 this Act, the court may make such temporary restrain-
2 ing order or prohibition as shall be deemed just in the
3 premises.

4 “(3) No person other than the Attorney General
5 or Commission shall have standing to bring an action
6 against an association or export trading company or
7 their respective members for failure of the association
8 or export trading company or their respective export
9 trade, export trade activities or methods of operation to
10 meet the criteria of section 2 of this Act.

11 **“SEC. 5. GUIDELINES.**

12 “(a) INITIAL PROPOSED GUIDELINES.—Within ninety
13 days after the enactment of the Export Trade Association
14 Act of 1980, the Secretary, after consultation with the Attor-
15 ney General, and the Commission shall publish proposed
16 guidelines for purposes of determining whether export trade,
17 export trade activities and methods of operation of an associ-
18 ation or export trading company will meet the requirements
19 of section 2 of this Act.

20 “(b) PUBLIC COMMENT PERIOD.—Following publica-
21 tion of the proposed guidelines, and any proposed revision of
22 guidelines, interested parties shall have thirty days to com-
23 ment on the proposed guidelines. The Secretary shall review
24 the comments and, after consultation with the Attorney Gen-
25 eral, and Commission, publish final guidelines within thirty

1 days after the last day on which comments may be made
2 under the preceding sentence.

3 “(c) PERIODIC REVISION.—After publication of the
4 final guidelines, the Secretary shall periodically review the
5 guidelines and, after consultation with the Attorney General,
6 and the Commission, propose revisions as needed.

7 “(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
8 ACT.—The promulgation of guidelines under this section
9 shall not be considered rulemaking for purposes of subchapter
10 II of chapter 5 of title 5, United States Code, and section
11 553 of such title shall not apply to their promulgation.

12 “SEC. 6. ANNUAL REPORTS.

13 “Every certified association or export trading company
14 shall submit to the Secretary an annual report, in such form
15 and at such time as he may require, which report updates
16 where necessary the information described by section 4(a) of
17 this Act.

18 “SEC. 7. OFFICE OF EXPORT TRADE IN COMMERCE
19 DEPARTMENT.

20 “The Secretary shall establish within the Department of
21 Commerce an office to promote and encourage to the great-
22 est extent feasible the formation of export trade associations
23 and export trading companies through the use of provisions of
24 this Act in a manner consistent with this Act.

1 **"SEC. 8. AUTOMATIC CERTIFICATION FOR EXISTING**
2 **ASSOCIATIONS.**

3 "The Secretary shall certify any export trade associ-
4 ation registered with the Federal Trade Commission as of
5 April 3, 1980, if such association, within one hundred and
6 eighty days after the date of enactment of such Act, files with
7 the Secretary an application for certification as provided for
8 in section 5 of this Act, unless such application shows on its
9 face that the association is not eligible for certification under
10 this Act.

11 **"SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL**
12 **REPORT INFORMATION.**

13 "(a) **GENERAL RULE.**—Portions of applications made
14 under section 4, including amendments to such applications,
15 and annual reports made under section 6 that contain trade
16 secrets or confidential business or financial information, the
17 disclosure of which would harm the competitive position of
18 the person submitting such information shall be confidential,
19 and, except as authorized by this section, no officer or em-
20 ployee, or former officer or employee, of the United States
21 shall disclose any such confidential information, obtained by
22 him in any manner in connection with his service as such an
23 officer or employee.

24 "(b) **DISCLOSURE TO ATTORNEY GENERAL OR COM-**
25 **MISSION.**—Whenever the Secretary believes that an appli-
26 cant may be eligible for a certificate, or has issued a certifi-

1 cate to an association or export trading company, he shall
2 promptly make available all materials filed by the applicant,
3 association or export trading company, including applications
4 and supplements thereto, reports of material changes, appli-
5 cations for amendments and annual reports, and information
6 derived therefrom. The Secretary shall make available appli-
7 cations, amendments thereto or annual reports, or informa-
8 tion derived therefrom, to the Attorney General or Commis-
9 sion, or any employee or officer thereof, for official use in
10 connection with an investigation or judicial or administrative
11 proceeding under this Act or the antitrust laws to which the
12 United States or the Commission is or may be a party. Such
13 information may only be disclosed by the Secretary upon a
14 prior certification that the information will be maintained in
15 confidence and will only be used for such official law enforce-
16 ment purposes.

17 **"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
18 **UNITED STATES OBLIGATIONS.**

19 "At such time as the United States undertakes binding
20 international obligations by treaty or statute, to the extent
21 that the operations of any export trade association or export
22 trading company, certified under this Act, are inconsistent
23 with such international obligations, the Secretary may re-
24 quire it to modify its operations so as to be consistent with
25 such international obligations.

1 **"SEC. 11. REGULATIONS.**

2 "The Secretary, after consultation with the Attorney
3 General and the Commission, shall promulgate such rules
4 and regulations as may be necessary to carry out the pur-
5 poses of this Act.

6 **"SEC. 12. TASK FORCE STUDY.**

7 "Seven years after the date of enactment of the Export
8 Trade Association Act of 1980, the President shall appoint,
9 by and with the advice and consent of the Senate, a task
10 force to examine the effect of the operation of this Act on
11 domestic competition and on United States international
12 trade and to recommend either continuation, revision, or ter-
13 mination of the Webb-Pomerene Act. The task force shall
14 have one year to conduct its study and to make its recom-
15 mendations to the President."

16 (b) REDESIGNATION OF SECTION 6.—The Act is
17 amended—

18 (1) by striking out "SEC. 6." in section 6 (15
19 U.S.C. 66), and

20 (2) by inserting immediately before such section
21 the following:

1 "SEC. 14. SHORT TITLE."

2 TITLE III—TAXATION OF EXPORT TRADING

3 COMPANIES

4 APPLICATION OF DISC RULES TO EXPORT TRADING

5 COMPANIES

6 SEC. 301. (a) Paragraph (1) of section 993(a) of the In-
7 ternal Revenue Code of 1954 (relating to qualified export
8 receipts of a DISC) is amended—

9 (1) by striking out "and" at the end of subpara-
10 graph (G),

11 (2) by striking out the period at the end of sub-
12 paragraph (H) and inserting in lieu thereof "and", and

13 (3) by adding at the end thereof the following new
14 subparagraph:

15 "(I) in the case of a DISC which is an
16 export trading company (as defined in section
17 103(5) of the Export Trading Company Act of
18 1980), or which is a subsidiary of such a com-
19 pany, gross receipts from the export of services
20 produced in the United States (as defined in sec-
21 tion 103(3) of such Act) or from export trade
22 services (as defined in section 103(4) of such
23 Act).".

24 (b) The Secretary of Commerce, after consultation with
25 the Secretary of the Treasury, shall develop, prepare, and
26 distribute to interested parties, including potential exporters,

1 information concerning the manner in which an export trad-
2 ing company can utilize the provisions of part IV of sub-
3 chapter N of chapter 1 of the Internal Revenue Code of 1954
4 (relating to domestic international sales corporations), and
5 any advantages or disadvantages which may reasonably be
6 expected from the election of DISC status or the establish-
7 ment of a subsidiary corporation which is a DISC.

8 (c) The amendments made by this section shall apply
9 with respect to taxable years beginning after December 31,
10 1980.

11 SUBCHAPTER S STATUS FOR EXPORT TRADING

12 COMPANIES

13 SEC. 302. (a) Paragraph (2) of section 1371(a) of the
14 Internal Revenue Code of 1954 (relating to the definition of a
15 small business corporation) is amended by inserting “, except
16 in the case of the shareholders of an export trading company
17 (as defined in section 103(5) of the Export Trading Company
18 Act of 1980) if such shareholders are otherwise small busi-
19 ness corporations for the purpose of this subchapter,” after
20 “shareholder”.

21 (b) The first sentence of section 1372(e)(4) of such Code
22 (relating to foreign income) is amended by inserting “, other
23 than an export trading company,” after “small business
24 corporation”.

1 (c) The amendments made by this section shall apply
2 with respect to taxable years beginning after December 31,
3 1980.



H. R. 7479

To establish a national export policy for the United States.

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1980

Mr. AU COIN (for himself, Mr. ALEXANDER, Mr. FRENZEL, Mr. GIBBONS, Mr. LOWRY, Mr. SKELTON, Mr. AKAKA, Mr. BROWN of Ohio, Mr. LaFALCE, Mr. RICHMOND, and Mr. MOAKLEY) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, the Judiciary, Ways and Means, Interstate and Foreign Commerce, Small Business, Agriculture, and Education and Labor

A BILL

To establish a national export policy for the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “National Export Policy Act of 1980”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—GENERAL FINDINGS AND PURPOSES

- Sec. 101. Findings.
- Sec. 102. Purposes.

TITLE II—EXPORT FINANCING

PART 1—FINDINGS AND CONCLUSIONS

- Sec. 201. Findings and conclusions.

PART 2—COMPETITIVE EXPORT FINANCING

- Sec. 221. Export-Import Bank to provide competitive financing.
- Sec. 222. Authorization of appropriations.
- Sec. 223. Reports on adequacy of appropriations.
- Sec. 224. Effective date for section 221.
- Sec. 225. Export expansion facility amendments.
- Sec. 226. Export-Import Bank board of directors.
- Sec. 227. Legislative consideration of limits on Export-Import Bank activities.

TITLE III—EXPORT-RELATED TAX POLICY

- Sec. 301. Findings; purposes.
- Sec. 302. Taxation of Americans overseas.
- Sec. 303. Reasonable estimation of bad debt reserves for export receivables.
- Sec. 304. Clarification of tax treatment of certain research and experimental expenditures.
- Sec. 305. Clarification of the tax treatment of foreign currency fluctuation losses on export receivables.
- Sec. 306. Deadline for exempting exports from the manufacturers excise tax.
- Sec. 307. Use of foreign trade zones in exporting.
- Sec. 308. Application of DISC rules to export trading companies.
- Sec. 309. Subchapter S status for export trading companies.

TITLE IV—ANTITRUST

PART 1—FINDINGS AND CONCLUSIONS

- Sec. 401. Findings and conclusions.

PART 2—REVISION OF WEBB-POMERENE ACT

- Sec. 421. Webb-Pomerene Act amendments.

PART 3—ANTITRUST PROCEDURES SIMPLIFICATION

- Sec. 431. Definitions.
- Sec. 432. Studies by Attorney General.
- Sec. 433. Procedures.
- Sec. 434. Compliance by exporters.
- Sec. 435. Injunctions.

- Sec. 436. Reports and disclosures.
- Sec. 437. Authorization of appropriations.
- Sec. 438. Effective date.

TITLE V—AMENDMENTS TO OTHER LAWS THAT HINDER EXPORTS

PART 1—FINDINGS AND CONCLUSIONS

- Sec. 501. Findings and conclusions.

PART 2—BUSINESS ACCOUNTING AND TRADE SIMPLIFICATION

- Sec. 521. Findings and conclusions.
- Sec. 522. Amendment of short title.
- Sec. 523. Accounting standards.
- Sec. 524. Repeal of section 30A.
- Sec. 525. Definitions.
- Sec. 526. Authority to issue guidelines.
- Sec. 527. Conforming change in Internal Revenue Code.
- Sec. 528. International agreements.

PART 3—EXPORT COMPETITIVENESS STATEMENTS; PAPERWORK

- Sec. 531. Export competitiveness statements.
- Sec. 532. Reduction of export paperwork.

TITLE VI—EXPORT AWARENESS AND EXPORT PROMOTION PROGRAMS

PART 1—FINDINGS; CONCLUSIONS

- Sec. 601. Statement of findings and conclusions.

PART 2—EXPORT TRADING COMPANIES

- Sec. 621. Short title.
- Sec. 622. Purpose.
- Sec. 623. Definitions.
- Sec. 624. Functions of the Secretary of Commerce.
- Sec. 625. Ownership of export trading companies by banks, bank holding companies, and international banking corporations.
- Sec. 626. Initial investments and operating expenses.
- Sec. 627. Guarantees for export accounts receivable and inventory.

PART 3—SMALL BUSINESS ACT AMENDMENTS

- Sec. 631. Short title.
- Sec. 632. Purposes.
- Sec. 633. Small business export financing assistance.
- Sec. 634. Small business export expansion assistance.
- Sec. 635. Location; authorization of appropriations.
- Sec. 636. Clearinghouse function.

PART 4—JOINT EXPORT MARKETING ASSISTANCE

- Sec. 641. Establishment of program.
- Sec. 642. Marketing proposals.
- Sec. 643. Financial agreement.
- Sec. 644. Authorization of appropriations.

PART 5—INTERNATIONAL EDUCATION PROGRAMS

- Sec. 651. Short title.
- Sec. 652. Higher Education Act amendments.

PART 6—EXPORT OF SERVICES

- Sec. 661. Export of services.

TITLE VII—AGRICULTURAL EXPORTS

- Sec. 701. Statement of findings and conclusions.

PART 1—COMMODITY CREDIT CORPORATION FINANCING FOR CERTAIN SALES

- Sec. 711. Financing for short-term export credit sales of agricultural commodities.

PART 2—EXPORT-IMPORT BANK CREDITS

- Sec. 721. Export-Import Bank credits for agricultural commodities.

PART 3—INTERNATIONAL WHEAT EXPORTING COMMISSION

- Sec. 731. Findings.
- Sec. 732. Establishment of Commission.
- Sec. 733. Program.
- Sec. 734. Participation by United States.
- Sec. 735. Presidential reports to Congress.

TITLE VIII—INTERNATIONAL AGREEMENTS

- Sec. 801. Findings and conclusions.
- Sec. 802. Multilateral Trade Agreement of 1979 and followup.
- Sec. 803. International Financing Code.
- Sec. 804. International code of business conduct.
- Sec. 805. International code on reciprocity on enforcement of antitrust.
- Sec. 806. Multilateral code on fair trade in services.

TITLE IX—GOVERNMENT SUPPORT OF EXPORT GOODS

PART 1—FINDINGS AND CONCLUSIONS

- Sec. 901. Statement of findings and conclusions.

PART 2—OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS

Sec. 921. Short title.

Subpart A—Overseas Private Investment Corporation

- Sec. 925. Purpose and policy.
- Sec. 926. Capital of corporation.
- Sec. 927. Organization and management.
- Sec. 928. Investment insurance and other programs.
- Sec. 929. Issuing authority, direct investment fund and reserves.
- Sec. 930. Income and revenues.
- Sec. 931. General provisions relating to insurance and guaranty program.
- Sec. 932. Definitions.
- Sec. 933. General provisions and powers.
- Sec. 934. Small business development.
- Sec. 935. Reports to the Congress.

Subpart B—Amendment of Foreign Assistance Act of 1961

- Sec. 941. Conforming amendments.
- Sec. 942. Transition provisions.

PART 3—ROLE OF ALL UNITED STATES AGENCIES IN EXPORT EXPANSION

- Sec. 951. International Development Cooperation Agency.
- Sec. 952. Office of Management and Budget.
- Sec. 953. Role of the Justice Department.
- Sec. 954. Small Business Administration.
- Sec. 955. Department of Energy.
- Sec. 956. The Congress.

PART 4—NATIONAL EXPORT COUNCIL

- Sec. 961. Establishment and membership.
- Sec. 962. Functions.
- Sec. 963. Administrative provisions.
- Sec. 964. Annual report.
- Sec. 965. Authorizations.

PART 5—COMMERCE DEPARTMENT

- Sec. 971. Commercial officers overseas.
- Sec. 972. Training of commercial officers.
- Sec. 973. Rank and privileges.
- Sec. 974. Relationship to diplomatic mission.
- Sec. 975. Functions and duties.
- Sec. 976. Assignment to United States.
- Sec. 977. Office space, equipment, and administrative and clerical personnel.
- Sec. 978. Agency, services, personnel, and facilities.
- Sec. 979. Performance of functions in foreign localities.
- Sec. 980. Reports and dispatches—availability to interested Government agencies.
- Sec. 981. Representative allowances.

Sec. 982. Allowances and benefits.

Sec. 983. Advance payment for rent and other services: Funds for courtesies to foreign representatives.

PART 6—REVIEW OF UNITED STATES EXPORT PROGRAMS

Sec. 991. Review.

1 **TITLE I—GENERAL FINDINGS AND PURPOSES**

2 **SEC. 101. FINDINGS.**

3 The Congress finds that—

4 (1) exports have become critical to the health of
5 the United States economy, doubling in 10 years to
6 reach 10 percent of the gross national product, ac-
7 counting, directly or indirectly, for 1 out of 9 jobs,
8 over 25 percent of agricultural output and over one-
9 fourth of goods produced;

10 (2) exports can play a major role in improving the
11 economic well-being of the United States—

12 (A) by providing the most constructive means
13 to pay for essential imports of raw materials,
14 fuels, and other goods;

15 (B) by helping to stem inflation;

16 (C) by creating jobs;

17 (D) by enhancing productivity;

18 (E) by helping to strengthen the value of the
19 dollar in world markets; and

20 (F) by supporting the United States influence
21 in international economic and political spheres;
22 and

1 with world markets growing at twice the pace of the
2 domestic economy, exports offer a promising opportu-
3 nity for economic growth;

4 (3) the United States international trade position
5 has been deteriorating in the face of strong competition
6 from the export-oriented nations in Europe, East Asia,
7 and the developing world, lagging productivity gains in
8 United States industries, and declining investment in
9 development of new technology; the United States
10 share of world exports is falling, growth of exports is
11 not keeping up with that of other competitor nations,
12 the United States no longer leads the world in manu-
13 factured goods exports, and both merchandise trade
14 and the balance of payments have registered repeated
15 record deficits;

16 (4) it is essential to the national interest that ex-
17 pansion of exports of United States farm products and
18 other goods, and services be a principal national goal;

19 (5) as all other successful trading nations have
20 done, the United States must give priority to export
21 expansion and take measures to develop a strong, com-
22 prehensive, internally consistent approach that deals
23 with both current and longer range problems facing our
24 economy;

1 (6) international trade activities are inextricably
2 tied to domestic economic developments; thus there
3 should be consistency between domestic and interna-
4 tional economic policies with the objective of strength-
5 ening the United States economy generally, increasing
6 the financial and competitive capabilities of United
7 States industry and improving the income and working
8 conditions of United States workers;

9 (7) the United States needs an aggressive policy
10 which takes positive action to promote United States
11 exports and improve the competitiveness of United
12 States industry rather than passively awaiting currency
13 and price changes, foreign trade barriers, and other in-
14 ternational developments; and

15 (8) previous policies and programs have not
16 achieved adequate improvement in United States
17 export performance and therefore must be supplement-
18 ed and supplanted by other measures designed to serve
19 this end.

20 **SEC. 102. PURPOSES.**

21 The purposes of this Act are—

22 (1) to improve the international balance of pay-
23 ments and trade positions of the United States by es-
24 tablishing a national export policy that makes export
25 expansion a national priority;

1 (2) to achieve consistency and harmony of purpose
2 between Government policies and practices that affect
3 exports in order to provide a more coherent and effective
4 implementation of export expansion policies;

5 (3) to declare it the policy of the United States
6 Government to provide strong support for United
7 States exporters by utilizing the maximum available
8 resources of the United States Government to promote
9 the export of United States goods and services except
10 where contrary to the national security or national economic
11 interests;

12 (4) to expand the Nation's exports of goods and
13 services by enhancing the ability and encouraging the
14 private sector to cooperate fully with Government in
15 fostering and facilitating export expansion;

16 (5) to increase understanding of the benefits of exports
17 by establishing educational programs and other
18 awareness activities that will change attitudes;

19 (6) to improve the competitiveness of United
20 States industry in international markets by making
21 adequate export credits available to exporters of all
22 sizes that are flexible enough to meet the competition;

23 (7) to offer incentives to United States industry to
24 export through adjustments in the United States tax
25 system;

1 (8) to clarify, modify, or eliminate existing laws,
2 rules, or regulations that unduly burden or disadvan-
3 tage exporters;

4 (9) to institute programs that provide specific tools
5 of the trade and a better trading environment for small
6 and medium-sized firms to develop export markets;

7 (10) to encourage continuation of efforts to reduce
8 foreign barriers to United States exports and unfair
9 practices through international negotiations and agree-
10 ments; and

11 (11) to ensure that all Government agencies in a
12 position to assist export expansion efforts are properly
13 set up to do so and make adjustments in functions as
14 appropriate to provide adequate support to exports.

15 **TITLE II—EXPORT FINANCING**

16 **PART 1—FINDINGS AND CONCLUSIONS**

17 **SEC. 201. FINDINGS AND CONCLUSIONS.**

18 (a) **FINDINGS.**—The Congress finds that—

19 (1) export financing has become an increasingly
20 important factor in determining export sales;

21 (2) there is a growing tendency by the major trad-
22 ing partners of the United States to resort to the use
23 of predatory financing arrangements to gain competi-
24 tive advantage for their exporters;

1 (3) other major trading countries have been un-
2 willing to negotiate an end to such practices and have
3 rejected a series of United States proposals to
4 strengthen provisions of the International Arrangement
5 on Guidelines for Officially Supported Export Credits;

6 (4) since the President concluded in March 1979
7 that further international negotiations would not be
8 productive at that time, and negotiations have not ad-
9 vanced significantly since then, measures to strengthen
10 programs of the Export-Import Bank of the United
11 States are required to insure continued United States
12 export competitiveness;

13 (5) the Export-Import Bank is not adequately
14 equipped to meet foreign officially supported export
15 credit competition; and

16 (6) the ability of the Export-Import Bank to con-
17 duct its business in an efficient and timely manner is
18 hampered both by the congressional appropriations
19 process and the lack of continuity among the Bank's
20 directors.

21 (b) PURPOSE.—It is the purpose of this title—

22 (1) to provide the authority for the Export-Import
23 Bank of the United States to engage in the use of ex-
24 traordinary measures of export finance to counter and

ultimately discourage the use of such measures by other major trading countries;

(2) to give the Export-Import Bank additional resources to enable United States exporters to compete in countries that are not traditional markets for United States exports; and

(3) to remove the institutional obstacles to the efficient functioning of the Export-Import Bank.

PART 2—COMPETITIVE EXPORT FINANCING

SEC. 221. EXPORT-IMPORT BANK TO PROVIDE COMPETITIVE FINANCING.

Section 2(b)(1)(A) of the Export-Import Bank Act of 1945 is amended by inserting after the third sentence thereof the following: "The Bank shall provide programs of export finance which are comparable in structure to those extraordinary official export credit measures offered by the principal countries whose exporters compete with United States exporters. Pursuant to such programs, the Bank shall offer export credit on rates, terms, and conditions competitive with those offered by other major trading countries. The Bank, at its discretion, shall use such programs to meet foreign official export credit competition until such time as the use of extraordinary measures of official export credit financing is prescribed in international agreements to which the United States is a party. For the purpose of this subsection, the term

1 'extraordinary measures of official export credit financing'
2 shall include, but not be limited to, programs of highly
3 concessional mixed credits, local cost financing, foreign cur-
4 rency financing, and lines of credit arrangements.'".

5 **SEC. 222. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated to the Export-
7 Import Bank, without fiscal year limitation, not to exceed
8 \$1,000,000,000 to achieve the purposes of the amendment
9 made by section 221 of this subpart.

10 **SEC. 223. REPORTS ON ADEQUACY OF APPROPRIATIONS.**

11 Within 60 days after section 221 becomes effective, and
12 annually thereafter, the Export-Import Bank of the United
13 States shall report to the Congress as to whether any addi-
14 tional appropriations or increases in overall commitment au-
15 thority or annual ceiling levels are necessary to achieve the
16 purposes of this subpart.

17 **SEC. 224. EFFECTIVE DATE FOR SECTION 221.**

18 (a) **IN GENERAL.**—Section 221 shall take effect 6
19 months after the date of enactment of this Act. The President
20 may defer the effective date of section 221 for an additional
21 period of not to exceed 6 months if—

22 (1) he determines that international agreements
23 have or will be concluded which put United States and
24 foreign exporters in a substantially equal competitive
25 position with respect to official export finance, and

1 (2) he reports to Congress prior to and following
2 such deferral period as to progress achieved in negoti-
3 ating an end to predatory export financing.

4 (b) **TERMINATION DATE.**—This subpart, and the
5 amendment made by section 221 shall cease to be in effect on
6 September 30, 1983, and on such date, section 2(b)(1)(A) of
7 the Export-Import Bank Act of 1945 is amended to read as
8 it would without the amendment made by section 221 of this
9 subpart.

10 **SEC. 225. EXPORT EXPANSION FACILITY AMENDMENTS.**

11 (a) **IN GENERAL.**—Section 1(a) of Public Law 90-390
12 (12 U.S.C. 635j(a)) is amended to read as follows:

13 “(a) It is the policy of the Congress that the Export-
14 Import Bank of the United States (hereinafter referred to as
15 the ‘Bank’) should, particularly in the presence of foreign of-
16 ficially supported export credit competition, facilitate through
17 loans, guarantees, and insurance (including coinsurance and
18 reinsurance) exports to countries which, in the judgment of
19 the Board of Directors of the Bank—

20 “(1) do not currently have sufficient access to in-
21 ternational credit facilities to finance additional imports
22 from the United States;

23 “(2) are demonstrating reasonable progress
24 toward economic stabilization and development;

1 “(3) offer adequate formal assurances of repay-
2 ment or foreign exchange availability through govern-
3 ment or other official trade or monetary authorities;
4 and

5 “(4) could make a significant contribution to the
6 long-term interests of the United States through in-
7 creased trade.”.

8 (b) INCREASE IN CONTRACTUAL LIABILITY LIMIT.—
9 Section 1(b) of Public Law 90-390 (12 U.S.C. 635j(b)) is
10 amended by striking out “\$500,000,000” and inserting in
11 lieu thereof “\$1,000,000,000”.

12 (c) EXPORT EXPANSION FACILITY.—Section 1 of
13 Public Law 90-390 (12 U.S.C. 635j) is amended by adding
14 at the end thereof the following:

15 “(d) The activities authorized by this Act shall be car-
16 ried out through a facility designated as the ‘Export Expan-
17 sion Facility’, and all loans, guarantees, and insurance made
18 under the authority of this Act shall be assigned to the
19 Export Expansion Facility.”.

20 (d) CAPITALIZATION OF FACILITY.—Public Law
21 90-390 is amended by adding at the end thereof the
22 following:

23 “SEC. 6. The Export Expansion Facility shall be cap-
24 italized during the first year after the date of enactment of
25 the National Export Policy Act of 1980 in the amount of

1 \$25,000,000 which shall be set aside from the Bank's accu-
2 mulated earnings. To ensure the continuing availability of
3 funds thereafter, the Board of Directors of the Bank shall
4 determine annually that portion of the Bank's earnings
5 needed to be retained for general purposes, and shall specify
6 that portion needed to capitalize the Export Expansion Fa-
7 cility. In any event, for each year thereafter through 1985,
8 not less than 30 per centum of the net income of the Bank or
9 \$20,000,000, whichever is less, shall be set aside each year
10 for the Export Expansion Facility.'".

11 **SEC. 226. EXPORT-IMPORT BANK BOARD OF DIRECTORS.**

12 The fifth sentence of section 3(c) of the Export-Import
13 Bank Act of 1945 is amended to read as follows: "The term
14 of office of each director, including the Chairman and the
15 Vice Chairman, shall be 10 years, except that of the direc-
16 tors first appointed pursuant to this sentence, one shall serve
17 for a term of 2 years, one shall serve for a term of 4 years,
18 one shall serve for a term of 6 years, one shall serve for
19 a term of 8 years, and one shall serve for a term of 10 years,
20 as designated by the President at the time of the
21 appointment.'".

22 **SEC. 227. LEGISLATIVE CONSIDERATION OF LIMITS ON**
23 **EXPORT-IMPORT BANK.**

24 Beginning in 1981, the appropriate committees of the
25 House of Representatives and the Senate shall consider limi-

1 tations on the credit, guaranty, and insurance activities of the
2 Export-Import Bank when they consider appropriations for
3 international trade activities of the United States rather than
4 when they consider appropriations for foreign assistance ac-
5 tivities of the United States.

6 TITLE III—EXPORT-RELATED TAX POLICY

7 SEC. 301. FINDINGS; PURPOSES.

8 (a) FINDINGS.—The Congress finds that—

9 (1) certain provisions of the Tax Code concerning
10 the taxation of income earned abroad discourage
11 United States citizens and businesses from undertaking
12 important economic activities which would contribute
13 significantly to an expansion of exports from the
14 United States, which would open foreign markets to
15 American products, and which would materially im-
16 prove our balance of trade and payments, and that
17 such provisions place United States businesses at a
18 competitive disadvantage and increase their costs by
19 imposing a higher tax burden than is borne by many
20 foreign competitors;

21 (2) certain provisions of the Tax Code concerning
22 reserves for bad debts arising from exports, certain re-
23 search and experimental expenditures, and foreign cur-
24 rency losses on export receivables discourage United

1 States businesses from engaging in export trade and
2 commerce;

3 (3) certain provisions of the Tax Code unfairly pe-
4 nalize United States exporters whose business is ad-
5 versely affected by war, civil unrest, or similar condi-
6 tions in foreign nations; and

7 (4) such provisions, by discouraging United States
8 businesses from engaging in foreign trade and com-
9 merce, cause a loss of jobs and income in the Ameri-
10 can economy.

11 (b) CONCLUSIONS.—The Congress concludes that—

12 (1) the Government should actively promote the
13 interest and participation of United States businesses in
14 foreign trade and should eliminate the tax disincentives
15 which unnecessarily impede United States exports; and

16 (2) removing tax disincentives should encourage
17 United States businesses to engage in foreign trade
18 and commerce, thereby improving our balance of pay-
19 ments and providing jobs and income for American
20 workers.

21 SEC. 302. TAXATION OF AMERICANS OVERSEAS.

22 (a) PARTIAL EXCLUSION FOR EARNED INCOME FROM
23 SOURCES WITHOUT THE UNITED STATES.—Section 911 of
24 the Internal Revenue Code of 1954 (relating to income

1 earned by individuals in certain camps) is amended to read as
2 follows:

3 **"SEC. 911. EARNED INCOME FROM SOURCES WITHOUT THE**
4 **UNITED STATES.**

5 **"(a) GENERAL RULE.—**In the case of an individual
6 who is—

7 **"(1)** a citizen of the United States and who estab-
8 lishes to the satisfaction of the Secretary that he has
9 been a bona fide resident of a foreign country or coun-
10 tries for an uninterrupted period which includes an
11 entire taxable year, or

12 **"(2)** a citizen or resident of the United States and
13 who, during any period of 12 consecutive months, is
14 present in a foreign country or countries during at
15 least 330 full days in such period,

16 there shall be excluded from gross income and exempt from
17 taxation under this subtitle amounts received from sources
18 within a foreign country or countries (except amounts paid by
19 the United States or any agency thereof) which constitute
20 earned income attributable to services performed during the
21 period of bona fide residence or during the 12-month period,
22 whichever is appropriate.

23 **"(b) DEFINITION OF EARNED INCOME.—**For purposes
24 of this section, the term 'earned income' means wages, sala-
25 ries, or professional fees, and other amounts received as com-

1 pensation for personal services actually rendered, but does
2 not include that part of the compensation derived by the tax-
3 payer for personal services rendered by him to a corporation
4 which represents a distribution of earnings or profits rather
5 than a reasonable allowance as compensation for the personal
6 services actually rendered. In the case of a taxpayer engaged
7 in a trade or business in which both personal services and
8 capital are material income-producing factors, under regula-
9 tions prescribed by the Secretary, a reasonable allowance as
10 compensation for the personal services rendered by the tax-
11 payer, not in excess of 30 percent of his share of the net
12 profits of such trade or business, shall be considered as
13 earned income.

14 “(c) SPECIAL RULES.—For the purpose of computing
15 the amount excludible under subsection (a)—

16 “(1) LIMITATIONS ON AMOUNT OF EXCLU-
17 SION.—The amount excluded from the gross income of
18 an individual under subsection (a) for any taxable year
19 shall not exceed an amount computed on a daily basis
20 at an annual rate of—

21 “(A) \$50,000, or

22 “(B) \$65,000, in the case of an individual
23 described in subsection (a)(1), but only with re-
24 spect to that portion of such taxable year occur-
25 ring after the individual has been a bona fide resi-

1 dent of a foreign country or countries for an unin-
2 terrupted period of 3 consecutive years.

3 “(2) **ATTRIBUTION TO YEAR IN WHICH SERVICES**
4 **ARE PERFORMED.**—For purposes of applying para-
5 graph (1), amounts received shall be considered re-
6 ceived in the taxable year in which the services to
7 which the amounts are attributable are performed.

8 “(3) **TREATMENT OF COMMUNITY INCOME.**—In
9 applying paragraph (1) with respect to amounts re-
10 ceived from services performed by a husband or wife
11 which are community income under community
12 property laws applicable to such income, the aggregate
13 amount excludible, under subsection (a) from the gross
14 income of such husband and wife shall equal the
15 amount which would be excludible if such amounts did
16 not constitute such community income.

17 “(4) **REQUIREMENT AS TO TIME OF RECEIPT.**—
18 No amount received after the close of the taxable year
19 following the taxable year in which the services to
20 which the amounts are attributable are performed may
21 be excluded under subsection (a).

22 “(5) **CERTAIN AMOUNTS NOT EXCLUDIBLE.**—No
23 amount—

24 “(A) received as a pension or annuity, or

1 “(B) included in gross income by reason of
2 section 402(b) (relating to taxability of beneficiary
3 of nonexempt trust), section 403(c) (relating to
4 taxability of beneficiary under a nonqualified an-
5 nuity), or section 403(d) (relating to taxability of
6 beneficiary under certain forfeitable contracts pur-
7 chased by exempt organizations),
8 may be excluded under subsection (a).

9 “(6) TEST OF BONA FIDE RESIDENCE.—A state-
10 ment by an individual who has earned income from
11 sources within a foreign country to the authorities of
12 that country that he is not a resident of that country, if
13 he is held not subject as a resident of that country to
14 the income tax of that country by its authorities with
15 respect to such earnings shall be conclusive evidence
16 with respect to such earnings that he is not a bona fide
17 resident of that country for purposes of subsection (a).

18 “(7) FOREIGN TAXES PAID ON EXCLUDED
19 INCOME NOT CREDITABLE OR DEDUCTIBLE.—An indi-
20 vidual shall not be allowed, as a deduction other than
21 the deduction allowed by section 217 (relating to
22 moving expenses) or as a credit against the tax im-
23 posed by this chapter, any credit for the amount of
24 taxes paid or accrued to a foreign country or posses-
25 sion of the United States, to the extent that such de-

duction or credit is properly allocable to or chargeable against amounts excluded from gross income under this subsection.

“(8) WAIVER OF PERIOD OF STAY IN FOREIGN COUNTRY.—For purposes of paragraphs (1) and (2) of subsection (a), an individual who for any period is a bona fide resident of or is present in a foreign country and who—

“(A) leaves such foreign country—

“(i) during any period during which the Secretary determines, after consultation with the Secretary of State, that individuals were required to leave such foreign country because of war, civil unrest, or similar adverse conditions in such foreign country which precluded the normal conduct of business by such individuals, and

“(ii) before meeting the requirements of such paragraphs (1) and (2), and

“(B) establishes to the satisfaction of the Secretary that he could reasonably have been expected to have met such requirements, shall be treated as having met such requirements with respect to that period during which he was a bona

1 fide resident or was present in the foreign
2 country.

3 This paragraph shall apply only with respect to periods
4 an individual was a bona fide resident of or present in
5 a foreign country and did not meet the requirements of
6 subsection (a) (1) or (2) with respect to such periods
7 because he left the foreign country after September 1,
8 1978.”.

9 (b) DEDUCTION FOR HOUSING EXPENSES.—Section
10 913 of the Internal Revenue Code of 1954 is amended to
11 read as follows:

12 “SEC. 913. DEDUCTION FOR CERTAIN HOUSING EXPENSES OF
13 LIVING ABROAD.

14 “(a) ALLOWANCE OF DEDUCTION.—In the case of an
15 individual who is—

16 “(1) a citizen of the United States and who estab-
17 lishes to the satisfaction of the Secretary that he has
18 been a bona fide resident of a foreign country or coun-
19 tries for an uninterrupted period which includes an
20 entire taxable year, or

21 “(2) a citizen or resident of the United States and
22 who during any period of 12 consecutive months is
23 present in a foreign country or countries during at
24 least 330 full days in such period,

1 there shall be allowed as a deduction for such taxable year or
2 for any taxable year which contains part of such period, the
3 qualified housing expenses set forth in subsection (b).

4 “(b) QUALIFIED HOUSING EXPENSES.—

5 “(1) IN GENERAL.—For purposes of this section,
6 the term ‘qualified housing expenses’ means the excess
7 of—

8 “(A) the individual’s housing expenses, over

9 “(B) the individual’s base housing amount.

10 “(2) HOUSING EXPENSES.—

11 “(A) IN GENERAL.—For purposes of para-
12 graph (1), the term ‘housing expenses’ means the
13 reasonable expenses paid or incurred during the
14 taxable year by or on behalf of the individual for
15 housing for the individual (and, if they reside with
16 him, for his spouse and dependents) in a foreign
17 country. Such term—

18 “(i) except as provided in clause (ii), in-
19 cludes expenses attributable to the housing
20 (such as security, utilities, and insurance),
21 and

22 “(ii) does not include interest and taxes
23 of the kind deductible under sections 163 and
24 164 or any amount allowable as a deduction
25 under section 216(a).

1 “(B) PORTION WHICH IS LAVISH OR EX-
2 TRAVAGANT NOT ALLOWED.—For purposes of
3 subparagraph (A), housing expenses shall not be
4 treated as reasonable to the extent such expenses
5 are lavish or extravagant under the circum-
6 stances.

7 “(3) BASE HOUSING AMOUNT.—For purposes of
8 paragraph (1) the term ‘base housing amount’ means
9 16 percent of the salary of an employee of the United
10 States whose salary grade is step 1 of grade GS-14,
11 said salary amount to be calculated on a daily basis for
12 the period determined in accordance with paragraph
13 (4)(B) of this subsection.

14 “(4) PERIODS TAKEN INTO ACCOUNT.—

15 “(A) IN GENERAL.—The expenses taken
16 into account under this subsection shall be only
17 those which are attributable to housing during pe-
18 riods for which—

19 “(i) the individual’s tax home is in a
20 foreign country, and

21 “(ii) the value of the individual’s hous-
22 ing is not excluded under section 119.

23 “(B) DETERMINATION OF BASE HOUSING
24 AMOUNT.—The base housing amount shall be de-

1 terminated for the periods referred to in subpara-
2 graph (A).

3 “(5) ONLY ONE HOUSE PER PERIOD.—If, but for
4 this paragraph, housing expenses for any individual
5 would be taken into account under paragraph (2) of
6 subsection (b) with respect to more than one abode for
7 any period, only housing expenses with respect to that
8 abode which bears the closest relationship to the indi-
9 vidual’s tax home shall be taken into account under
10 such paragraph (2) for such period.

11 “(c) REGULATIONS.—The Secretary shall prescribe
12 such regulations as may be necessary or appropriate to carry
13 out the purposes of this section, including regulations provid-
14 ing rules—

15 “(1) for cases where a husband and wife each
16 have earned income from sources outside the United
17 States, and

18 “(2) for married individuals filing separate
19 returns.”.

20 (c) CLERICAL AMENDMENTS.—

21 (1) The table of sections for subpart B of part III
22 of subchapter N of chapter 1 of such Code is amended
23 by striking out the item relating to section 911 and in-
24 serting in lieu thereof the following:

“Sec. 911. Earned income from sources without the United States.”.

(2) Sections 43(c)(1)(B), 1302(b)(2)(A)(i), 1304(b)(1), 1402(a)(8), 6012(c), and 6091(b)(1)(B)(iii) of such Code are each amended by striking out “relating to income earned by employees in certain camps” and inserting in lieu thereof “relating to earned income from sources without the United States”.

(3) The table of sections for subpart B of part III of subchapter N of chapter 1 of such Code is amended by striking out the item relating to section 913 and inserting in lieu thereof the following:

“Sec. 913. Deduction for certain housing expenses of living abroad.”.

(4) Section 62 of such Code (relating to definition of adjusted gross income) is amended by inserting “HOUSING” after “CERTAIN” in the caption of paragraph (14).

(d) EFFECTIVE DATE.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to taxable years beginning after December 31, 1980.

(2) ELECTION OF PRIOR LAW.—

(A) A taxpayer may elect not to have the amendments made by this section apply with respect to any taxable year beginning after December 31, 1977, and before January 1, 1981.

1 (B) An election under this paragraph shall be
2 filed with the taxpayer's timely filed return for
3 the first taxable year beginning after December
4 31, 1978.

5 **SEC. 303. REASONABLE ESTIMATION OF BAD DEBT RESERVES**
6 **FOR EXPORT RECEIVABLES.**

7 Subsection (c) of section 166 of the Internal Revenue
8 Code of 1954 (relating to reserve for bad debts) is amended
9 to read as follows:

10 “(c) **RESERVE FOR BAD DEBTS.**—

11 “(1) **GENERAL RULE.**—In lieu of any deduction
12 under subsection (a), there shall be allowed (in the dis-
13 cretion of the Secretary) a deduction for a reasonable
14 addition to a reserve for bad debts.

15 “(2) **REASONABLE ESTIMATION FOR BAD DEBTS**
16 **IN CONNECTION WITH EXPORTS.**—

17 “(A) **SEPARATE RESERVE.**—A taxpayer en-
18 gaged in the trade or business of selling export
19 property or services for use outside the United
20 States may establish a separate reserve for bad
21 debts with respect to that trade or business.

22 “(B) **ANNUAL ADDITION.**—The amount
23 added to any such separate reserve for the taxable
24 year shall not exceed the greater of—

1 “(i) 15 percent of the taxable income
2 from sources without the United States
3 (within the meaning of section 862(b)) for the
4 taxable year attributable to such trade or
5 business, or

6 “(ii) 2 percent of the taxpayer’s export
7 receivables outstanding as of the close of the
8 taxable year.

9 “(C) MAXIMUM RESERVE.—No amount may
10 be added to any such reserve for the taxable year
11 which would cause the total amount credited to
12 the reserve as of the close of the taxable year to
13 exceed 5 percent of the taxpayer’s export receiv-
14 ables outstanding as of the close of the taxable
15 year.

16 “(D) DEFINITIONS.—For purposes of this
17 paragraph—

18 “(i) EXPORT RECEIVABLES.—The term
19 ‘export receivables’ means accounts receiv-
20 able for export receipts.

21 “(ii) EXPORT RECEIPTS.—The term
22 ‘export receipts’ means gross receipts from
23 the sale of export property or services for
24 use outside the United States.

1 “(iii) EXPORT PROPERTY.—The term
2 ‘export property’ has the same meaning as
3 such term has in section 971(e).”.

4 **SEC. 304. CLARIFICATION OF TAX TREATMENT OF CERTAIN**
5 **RESEARCH AND EXPERIMENTAL EXPENDI-**
6 **TURES.**

7 Section 174 of the Internal Revenue Code of 1954 (re-
8 lating to research and experimental expenditures) is amended
9 by redesignating subsection (e) as (f), and by inserting imme-
10 diately after subsection (d) the following new subsection:

11 “(e) CERTAIN EXPORT-RELATED EXPENDITURES.—
12 At the election of the taxpayer, made in accordance with
13 regulations prescribed by the Secretary, amounts paid or in-
14 curred for the following items may be treated as research or
15 experimental expenditures under subsection (a) or (b):

16 “(1) FOREIGN MARKET STUDIES, ETC.—Amounts
17 paid or incurred in connection with the survey or anal-
18 ysis of foreign markets and products.

19 “(2) FOREIGN MARKETING EXPENSES.—
20 Amounts paid or incurred in connection with market-
21 ing, outside the United States, goods produced in the
22 United States, including, but not limited to, amounts
23 paid or incurred in adapting United States products to
24 meet foreign market requirements.

“(3) FOREIGN PATENT COSTS.—Amounts paid or incurred in connection with the application for, or maintenance of, international and foreign patents and trademarks (without regard to whether the taxpayer is the owner of, or the owner of the rights to, the United States patent for the item) for use in the taxpayer’s trade or business.”.

SEC. 305. CLARIFICATION OF THE TAX TREATMENT OF FOREIGN CURRENCY FLUCTUATION LOSSES ON EXPORT RECEIVABLES.

Section 165 of the Internal Revenue Code of 1954 (relating to losses) is amended by redesignating subsection (i) as subsection (j), and by inserting after subsection (h) the following new subsection:

“(i) LOSSES ATTRIBUTABLE TO FOREIGN CURRENCY FLUCTUATIONS ON EXPORT RECEIVABLES.—

“(1) GENERAL RULE.—At the election of the taxpayer, there shall be allowed as a deduction an amount equal to the foreign currency fluctuation loss of the taxpayer for the taxable year with respect to export receivables. The election shall be made at such time and in such manner as the Secretary may prescribe, and may be made on a currency-by-currency basis.

“(2) DEFINITIONS; SPECIAL RULES.—For purposes of this subsection—

“(A) FOREIGN CURRENCY FLUCTUATION
LOSS.—The term ‘foreign currency fluctuation
loss’ means the amount by which the value,
stated in United States dollars, of an export re-
ceivable, payable in foreign currency, on the later
of—

“(i) the first day of the taxable year, or
“(ii) the date on which the export re-
ceivable was created,
exceeds the value of the export receivable, stated
in United States dollars, on the last day of the
taxable year.

“(B) EXPORT RECEIVABLE.—The term
‘export receivable’ has the same meaning as in
section 166(c)(2)(D)(i).

“(C) DEDUCTION ALLOWED ONLY TO TAX-
PAYER WHOSE TRADE OR BUSINESS CREATED
THE EXPORT RECEIVABLE.—The deduction al-
lowed by this subsection shall be allowed only to
the taxpayer whose trade or business created the
export receivable with respect to which the de-
duction is allowable.

“(3) RECAPTURE UPON RECEIPT.—If the amount
received by the taxpayer in satisfaction of an export
receivable exceeds—

1 “(A) the value of that receivable, stated in
2 United States dollars, on the date on which it was
3 created, reduced by

4 “(B) the sum of the amounts allowed for all
5 taxable years under this subsection with respect
6 to that receivable,

7 then, for purposes of this chapter, the amount realized
8 by the taxpayer in satisfaction of that receivable shall
9 be increased by the amount of such excess.

10 “(4) APPLICATION WITH SECTION 166.—For the
11 purpose of determining the amount of the deduction al-
12 lowable under section 166(a) for any taxable year for a
13 debt which is an export receivable for which a deduc-
14 tion has been claimed under this subsection, the adjust-
15 ed basis shall be reduced by the sum of any deductions
16 allowed under this subsection for that and all prior tax-
17 able years.

18 “(5) REGULATIONS.—The Secretary shall pre-
19 scribe such regulations as may be necessary to carry
20 out this subsection.”.

21 **SEC. 306. DEADLINE FOR EXEMPTING EXPORTS FROM THE**
22 **MANUFACTURERS EXCISE TAX.**

23 (a) IN GENERAL.—Section 4221(b) of the Internal Rev-
24 enue Code of 1954 (relating to certain tax-free sales) is
25 amended by adding at the end thereof the following: “The

1 Secretary may extend the 6-month deadline with respect to
2 exports for an additional 12 months if he determines, after
3 consultation with the Secretary of State, that exports were
4 delayed because of war, civil unrest, or similar adverse condi-
5 tions in a foreign nation.”.

6 (b) **EFFECTIVE DATE.**—The amendment made by this
7 section shall apply to taxable years beginning after December
8 31, 1978.

9 **SEC. 307. USE OF FOREIGN TRADE ZONES IN EXPORTING.**

10 (a) The Act of June 18, 1934 (commonly known as the
11 Foreign Trade Zones Act; 19 U.S.C. 81a et seq.), is amend-
12 ed by inserting after section 3 the following new section:

13 “SEC. 3A. (a) The Secretary is authorized to approve
14 the duty-free entry of—

15 “(1) machinery and materials to be used solely in
16 the manufacture or production of goods in a zone if
17 such goods are not subsequently entered into the cus-
18 toms territory of the United States, and

19 “(2) fuel and materials consumed solely in the
20 manufacture or production of such goods, in the same
21 manner and subject to the same limitations as foreign
22 merchandise brought into such zone without being sub-
23 ject to the customs laws of the United States under
24 section 3 of this Act. The Secretary shall approve such
25 duty-free entry if he determines that such action con-

1 forms to an application approved by the Board under
2 subsection (b).

3 “(b) Any grantee may apply to the Board for the appli-
4 cation of the provisions of this section to any project con-
5 ducted, or proposed to be conducted, within the zone, operat-
6 ed and maintained by the grantee. The Board may approve
7 any such application if it determines that—

8 “(1) the application of this section is essential to
9 the successful operation of the project which is the
10 subject of the application;

11 “(2) domestic machinery, materials, and fuel are
12 not available at prices comparable to the foreign ma-
13 chinery, materials, and fuel which are proposed to be
14 used or consumed in the operation of such project, or
15 at prices which would permit the successful operation
16 of such project;

17 “(3) the total value of the goods to be manufac-
18 tured or produced and exported will exceed the duties
19 which (but for the application of this section) would
20 apply to the entry of machinery, materials, and fuel to
21 be used or consumed in the manufacture or production
22 of such goods and the total retail value of such goods
23 would be in excess of \$100,000; and

24 “(4) the establishment and operation of the project
25 for which the application is made would not, deter-

1 mined by the Board, significantly reduce the export op-
2 erations of similar existing businesses.

3 “(c) Upon receipt of each application, the Board shall
4 publish a notice in the Federal Register to solicit the views of
5 the general public, to be submitted to the Board within 30
6 days after publication of the notice. The Board shall have 30
7 days after such views are submitted to reject or approve the
8 application, except that it may order an additional 60-day
9 extension for the purpose of requiring the applicant to submit
10 additional supporting information. A final determination shall
11 be made no later than 120 days after submission of the
12 application.

13 “(d) Approval granted under subsections (b) and (c) of
14 this section shall be valid for 6 years, and every interested
15 manufacturer shall reapply for approval with the Board under
16 subsections (b) and (c) at 6-year intervals.

17 “(e) Machinery, fuel, materials, or manufactured goods
18 imported pursuant to this section shall be subject to duty and
19 taxation at regular rates if subsequently entered into the cus-
20 toms territory of the United States.

21 “(f) The Board shall promulgate such rules and regula-
22 tions as it considers necessary to carry out the purposes of
23 this section. Such rules and regulations shall be designed in
24 such a way as to eliminate unnecessary paperwork, to sim-
25 plify forms, and to expedite all proceedings.”.

1 (b) **REPORT.**—Section 16(c) of such Act is amended by
 2 inserting after “grantee.” the following new sentence: “The
 3 report shall also contain a summary of activities and pro-
 4 grams of the Board in each zone intended to increase the use
 5 of foreign trade zones to expand United States exports and
 6 such proposals as the Secretary shall make to expand the use
 7 of foreign trade zones in exporting.”.

8 **SEC. 308. APPLICATION OF DISC RULES TO EXPORT TRADING**
 9 **COMPANIES.**

10 (a) **ELIGIBLE ORGANIZATIONS.**—Paragraph (3) of sec-
 11 tion 992(d) of the Internal Revenue Code of 1954 (relating to
 12 ineligible corporations) is amended by inserting before the
 13 comma at the end thereof the following: “(other than a finan-
 14 cial institution which is a banking organization as defined in
 15 section 625(a)(1) of this Act investing in the voting stock of
 16 an export trading company (as defined in section 623(a)(5) of
 17 this Act) in accordance with the provisions of section 105 of
 18 this Act)”.

19 (b) **RECEIPTS FROM SERVICES.**—Paragraph (1) of sec-
 20 tion 993(a) of the Internal Revenue Code of 1954 (relating to
 21 qualified export receipts of a DISC) is amended—

22 (1) by striking out “and” at the end of subpara-
 23 graph (G),

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof “, and”, and

(3) by adding at the end thereof the following new subparagraph:

“(I) in the case of a DISC which is an export trading company (as defined in section 623(a)(5) of the National Export Policy Act of 1980), or which is a subsidiary of such a company, gross receipts from the export of services produced in the United States (as defined in section 623(a)(3) of such Act) or from export trade services (as defined in section 623(a)(4) of such Act).”.

(c) PUBLICITY.—The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall develop, prepare, and distribute to interested parties, including potential exporters, information concerning the manner in which an export trading company can utilize the provisions of part IV of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to domestic international sales corporations), and any advantages or disadvantages which may reasonably be expected from the election of DISC status or the establishment of a subsidiary corporation which is a DISC.

1 (d) EFFECTIVE DATE.—The amendments made by this
2 section shall apply with respect to taxable years beginning
3 after December 31, 1980.

4 SEC. 309. SUBCHAPTER S STATUS FOR EXPORT TRADING
5 COMPANIES.

6 (a) IN GENERAL.—Paragraph (2) of section 1371(a) of
7 the Internal Revenue Code of 1954 (relating to the definition
8 of a small business corporation) is amended by inserting “,
9 except in the case of the shareholders of an export trading
10 company (as defined in section 623(a)(5) of the National
11 Export Policy Act of 1980) if such shareholders are other-
12 wise small business corporations for the purpose of this sub-
13 chapter,” after “shareholder”.

14 (b) CONFORMING AMENDMENT.—The first sentence of
15 section 1372(e)(4) of such Code (relating to foreign income) is
16 amended by inserting “, other than an export trading com-
17 pany,” after “small business corporation”.

18 (c) EFFECTIVE DATE.—The amendments made by this
19 section shall apply with respect to taxable years beginning
20 after December 31, 1980.

21 TITLE IV—ANTITRUST

22 PART 1—FINDINGS AND CONCLUSIONS

23 SEC. 401. FINDINGS AND CONCLUSIONS.

24 (a) FINDINGS.—The Congress finds that—

1 (1) the application of current United States anti-
2 trust laws to international trade activities serves as a
3 restraint on exports;

4 (2) the purpose of United States antitrust laws to
5 foster competition reflects a basic premise of our free
6 enterprise system;

7 (3) the domestic application of the antitrust laws
8 clearly—

9 (A) encourages efficient resource allocations,

10 (B) stimulates the use of efficient methods of
11 production and distribution,

12 (C) encourages progressive technology and
13 high productivity, and

14 (D) serves the public by affording goods and
15 services at the most reasonable price;

16 (4) the benefits of applying current antitrust laws
17 to United States trade overseas where, in many cases,
18 competition as understood in the United States does
19 not exist, are not so clear;

20 (5) the application of United States antitrust laws
21 to extraterritorial trading is highly complex and am-
22 biguous, making full compliance difficult and costly and
23 sometimes resulting in a restraint on exports rather
24 than an encouragement of competition;

1 (6) the difficulties antitrust laws present to export-
2 ers are compounded by the conflicting jurisdictions
3 over enforcement of those laws between the States and
4 the United States Department of Justice and Federal
5 Trade Commission, and assurances from one agency
6 that it will not prosecute a particular export trade ac-
7 tivity is not necessarily binding on the others and does
8 not preclude private treble damage litigation; and

9 (7) the obligations imposed upon the conduct and
10 structure of businesses by United States antitrust laws
11 have few parallels among major foreign competitors or
12 in most overseas markets for United States exports.

13 (b) CONCLUSIONS.—The Congress therefore concludes
14 that—

15 (1) decisions on the interpretation and enforce-
16 ment of United States antitrust laws should reflect the
17 national interest in expanded export trade and should
18 not restrain unnecessarily the United States' ability to
19 be an aggressive exporter of goods and services;

20 (2) a comprehensive study of the international as-
21 pects of the United States antitrust laws, applicable
22 rules of court, related statutes, administrative proce-
23 dures, and their applications, consequences, and inter-
24 pretation by the courts and Federal agencies should be
25 undertaken to determine what reforms are required to

1 improve the ability of United States enterprises to
2 compete effectively abroad;

3 (3) changes in the antitrust laws for export trade
4 purposes should not tamper with their application to
5 domestic commerce;

6 (4) antitrust laws should permit normal interna-
7 tional business practices, particularly those regarding
8 product marketing techniques, licensing, and bidding
9 procedures, and should recognize the realities of widely
10 differing foreign markets as long as they do not ad-
11 versely affect domestic competition;

12 (5) the application of United States antitrust laws
13 to international activities must be clearly defined prior
14 to enforcement;

15 (6) uncoordinated and conflicting actions by agen-
16 cies with concurrent jurisdiction should be eliminated;

17 (7) the Webb-Pomerene Act should be amended to
18 allow business associations to obtain pre-clearance
19 from the Department of Commerce for the joint export-
20 ing of goods or services that will grant antitrust immu-
21 nity for certified activities;

22 (8) a formal business review process should be es-
23 tablished at the Department of Justice to permit pre-
24 clearance with respect to the nonapplicability of anti-

trust laws to a firm's overseas activities that will assure against prosecution for antitrust violations; and (9) procedures for efficiently informing existing and potential exporters of legal requirements and their impact on specific categories of export transactions should be developed.

PART 2—REVISION OF WEBB-POMERENE ACT

SEC. 421. WEBB-POMERENE ACT AMENDMENTS.

(a) **PURPOSE.**—It is the purpose of this section to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

(b) **DEFINITIONS.**—The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

“SECTION 1. DEFINITIONS.

“As used in this Act—

“(1) **EXPORT TRADE.**—The term ‘export trade’ means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being ex-

1 ported from the United States or any territory thereof
2 to any foreign nation.

3 “(2) SERVICE.—The term ‘service’ means intangi-
4 ble economic output, including, but not limited to—

5 “(A) business, repair, and amusement
6 services;

7 “(B) management, legal, engineering, archi-
8 tectural, and other professional services; and

9 “(C) financial, insurance, transportation, and
10 communication services.

11 “(3) EXPORT TRADE ACTIVITIES.—The term
12 ‘export trade activities’ includes activities or agree-
13 ments in the course of export trade.

14 “(4) TRADE WITHIN THE UNITED STATES.—The
15 term ‘trade within the United States’ whenever used in
16 this Act means trade or commerce among the several
17 States or in any Territory of the United States, or in
18 the District of Columbia, or between any such Terri-
19 tory and another, or between any such Territory or
20 Territories and any State or States or the District of
21 Columbia, or between the District of Columbia and any
22 State or States.

23 “(5) ASSOCIATION.—The term ‘association’
24 means any combination, by contract or other arrange-
25 ment, of persons who are citizens of the United States,

1 partnerships which are created under and exist pursu-
2 ant to the laws of any State or of the United States, or
3 corporations which are created under and exist pursu-
4 ant to the laws of any State or of the United States.

5 “(6) EXPORT TRADING COMPANY.—The term
6 ‘export trading company’ means an export trading
7 company as defined in section 623(a)(5) of the National
8 Export Policy Act of 1980.

9 “(7) ANTITRUST LAWS.—The term ‘antitrust
10 laws’ means the antitrust laws defined in the first sec-
11 tion of the Clayton Act (15 U.S.C. 12) and section 4
12 of the Federal Trade Commission Act (15 U.S.C. 44),
13 and any State antitrust or unfair competition law.

14 “(8) SECRETARY.—The term ‘Secretary’ means
15 the Secretary of Commerce.

16 “(9) ATTORNEY GENERAL.—The term ‘Attorney
17 General’ means the Attorney General of the United
18 States.

19 “(10) COMMISSION.—The term ‘Commission’
20 means the Federal Trade Commission.”.

21 (c) ANTITRUST EXEMPTION.—The Webb-Pomerene
22 Act (15 U.S.C. 61–66) is amended by striking out the second
23 section (15 U.S.C. 62) and inserting in lieu thereof the
24 following:

1 "SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

2 "(a) ELIGIBILITY.—The export trade, export trade ac-
3 tivities, and methods of operation of any association, entered
4 into for the sole purpose of engaging in export trade, and
5 engaged in or proposed to be engaged in such export trade,
6 and the export trade and methods of operation of any export
7 trading company, that—

8 "(1) serve to preserve or promote export trade;

9 "(2) result in neither a substantial lessening of
10 competition or restraint of trade within the United
11 States nor a substantial restraint of the export trade of
12 any competitor of such association or export trading
13 company;

14 "(3) do not unreasonably enhance, stabilize, or de-
15 press prices within the United States of the goods,
16 wares, merchandise, or services of the class exported
17 by such association or export trading company;

18 "(4) do not constitute unfair methods of competi-
19 tion against competitors engaged in the export trade of
20 goods, wares, merchandise, or services of the class ex-
21 ported by such association or export trading company;

22 "(5) do not include any act which results, or may
23 reasonably be expected to result, in the sale for con-
24 sumption or resale within the United States of the
25 goods, wares, merchandise, or services exported by the

1 association or export trading company or its members;
2 and

3 “(6) do not constitute trade or commerce in the
4 licensing of patents, technology, trademarks, or know-
5 how, except as incidental to the sale of the goods,
6 wares, merchandise, or services exported by the associ-
7 ation or export trading company or its members,
8 shall, when certified according to the procedures set forth in
9 this Act, be eligible for the exemption provided in subsection
10 (b).

11 “(b) EXEMPTION.—An association or an export trading
12 company and its members with respect to its export trade,
13 export trade activities and methods of operation are exempt
14 from the operation of the antitrust laws as relates to their
15 respective export trade, export trade activities or methods of
16 operation that are specified in a certificate issued according
17 to the procedures set forth in the Act, carried out in conform-
18 ity with the provisions, terms, and conditions prescribed in
19 such certificate and engaged in during the period in which
20 such certificate is in effect. The subsequent revocation or in-
21 validation of such certificate shall not render the association
22 or its members, or an export trading company or its mem-
23 bers, liable under the antitrust laws for such trade, export
24 trade activities or methods of operation engaged in during
25 such period.

1 “(c) DISAGREEMENT OF ATTORNEY GENERAL OR
2 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
3 Act, the Attorney General or Commission has formally ad-
4 vised the Secretary of disagreement with his determination to
5 issue a proposed certificate, and the Secretary has nonethe-
6 less issued such proposed certificate or an amended certifi-
7 cate, the exemption provided by this section shall not be ef-
8 fective until thirty days after the issue of such certificate.”.

9 (d) AMENDMENT OF SECTION 3.—The Webb-Pomerene
10 Act (15 U.S.C. 61–66) is amended—

11 (1) by inserting immediately before section 3 (15
12 U.S.C. 63) the following:

13 “SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
14 ATIONS PERMITTED.”.

15 (2) by striking out “SEC. 3. THAT NOTHING” in
16 section 3 and inserting in lieu thereof “NOTHING”.

17 (e) ADMINISTRATION; ENFORCEMENT; REPORTS.—

18 (1) IN GENERAL.—The Webb-Pomerene Act (15
19 U.S.C. 61–66) is amended by striking out sections 4
20 and 5 (15 U.S.C. 64 and 65) and inserting in lieu
21 thereof the following sections:

22 “SEC. 4. CERTIFICATION.

23 “(a) PROCEDURE FOR APPLICATION.—Any association
24 or export trading company seeking certification under this

1 Act shall file with the Secretary a written application for
2 certification setting forth the following:

3 “(1) The name of the association or export trad-
4 ing company.

5 “(2) The location of all of the offices or places of
6 business of the association or export trading company
7 in the United States and abroad.

8 “(3) The names and addresses of all of the offi-
9 cers, stockholders, and members of the association, or
10 export trading company.

11 “(4) A copy of the certificate or articles of incor-
12 poration and bylaws, if the association, or export trad-
13 ing company is a corporation; or a copy of the articles,
14 partnership, joint venture, or other agreement or con-
15 tract under which the association or export trading
16 company conducts or proposes to conduct its export
17 trade activities or contract of association or export
18 trading company, if the association or export trading
19 company is unincorporated.

20 “(5) A description of the goods, wares, merchan-
21 dise, or services which the association or export trad-
22 ing company or their members export or propose to
23 export.

24 “(6) A description of the domestic and interna-
25 tional conditions, circumstances, and factors which

1 show that the association or export trading company
2 and its activities will serve a specified need in promot-
3 ing the export trade of the described goods, wares,
4 merchandise, or services.

5 “(7) The export trade activities in which the asso-
6 ciation or export trading company intends to engage
7 and the methods by which the association or export
8 trading company conducts or proposes to conduct
9 export trade in the described goods, wares, merchan-
10 dise, or services, including, but not limited to, any
11 agreements to sell exclusively to or through the associ-
12 ation, any agreements with foreign persons who may
13 act as joint selling agents, any agreements to acquire a
14 foreign selling agent, any agreements for pooling tangi-
15 ble or intangible property or resources, or any terri-
16 torial, price-maintenance, membership, or other restric-
17 tions to be imposed upon members of the association or
18 export trading company.

19 “(8) The names of all countries where export
20 trade in the described goods, wares, merchandise, or
21 services is conducted or proposed to be conducted by
22 or through the association or export trading company.

23 “(9) Any other information which the Secretary
24 may request concerning the organization, operation,
25 management, or finances of the association or export

1 trading company; the relation of the association or
2 export trading company to other associations, corpora-
3 tions, partnerships, and individuals; and competition or
4 potential competition, and effects of the association or
5 export trading company thereon. The Secretary may
6 request such information as part of an initial applica-
7 tion or as a necessary supplement thereto. The Secre-
8 tary may not request information under this paragraph
9 which is not reasonably available to the person making
10 application or which is not necessary for certification of
11 the prospective association or export trading company.

12 “(b) ISSUANCE OF CERTIFICATE.—

13 “(1) 90-DAY PERIOD.—The Secretary shall issue
14 a certificate to an association or export trading compa-
15 ny within 90 days after receiving the application for
16 certification or necessary supplement thereto if the
17 Secretary, after consultation with the Attorney Gener-
18 al and Commission, determines that the association, its
19 export trade, export trade activities and methods of op-
20 eration, or export trading company, and its export
21 trade, export trade activities and methods of operation
22 meet the requirements of section 2 of this Act and that
23 the association or export trading company and its ac-
24 tivities will serve a specified need in promoting the
25 export trade of the goods, wares, merchandise, or serv-

ices described in the application for certification. The certificate shall specify the permissible export trade, export trade activities and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary deems necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that he proposes to issue. The Attorney General or Commission may, within 15 days thereafter, give written notice to the Secretary of an intent to offer advice on the determination. The Attorney General or Commission may, after giving such written notice and within 45 days of the time the Secretary has delivered a copy of a proposed certificate, formally advise the Secretary of disagreement with his determination. The Secretary shall not issue any certificate prior to the expiration of such 45-day period unless he has (A) received no notice of intent to offer advice by the Attorney General or the Commission within 15 days after delivering a copy of a proposed certificate, or (B) received any notice and formal advice of disagreement or written confirmation that no formal disagreement will be transmitted from the Attorney General and the Commission. After the 45-day period or, if no notice of

1 intent to offer advice has been given, after the 15-day
2 period, the Secretary shall either issue the proposed
3 certificate, issue an amended certificate, or deny the
4 application. Upon agreement of the applicant, the Sec-
5 retary may delay taking action for not more than thirty
6 additional days after the 45-day period. Before offering
7 advice on a proposed certification, the Attorney Gener-
8 al and Commission shall consult in an effort to avoid,
9 wherever possible, having both agencies offer advice on
10 any application.

11 “(2) EXPEDITED CERTIFICATION.—In those in-
12 stances where the temporary nature of the export trade
13 activities, deadlines for bidding on contracts or filling
14 orders, or any other circumstances beyond the control
15 of the association or export trading company which
16 have a significant impact on its export trade, make the
17 90-day period for application approval described in
18 paragraph (1) of this subsection, or an amended appli-
19 cation approval as provided in subsection (c) of this
20 section, impractical for the association or export trad-
21 ing company seeking certification, such association or
22 export trading company may request and may receive
23 expedited action on its application for certification.

24 “(3) APPEAL OF DETERMINATION.—If the Secre-
25 tary determines not to issue a certificate to an associ-

1 ation or export trading company which has submitted
2 an application or an amended application for certifica-
3 tion, then he shall—

4 “(A) notify the association or export trading
5 company of his determination and the reasons for
6 his determination, and

7 “(B) upon request made by the association or
8 export trading company afford it an opportunity
9 for a hearing with respect to that determination in
10 accordance with section 557 of title 5, United
11 States Code.

12 “(c) MATERIAL CHANGES IN CIRCUMSTANCES;
13 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
14 terial change in the membership, export trade, export trade
15 activities, or methods of operation, of an association or export
16 trading company then it shall report such change to the Sec-
17 retary and may apply to the Secretary for an amendment of
18 its certificate. Any application for an amendment to a certifi-
19 cate shall set forth the requested amendment of the certifi-
20 cate and the reasons for the requested amendment. Any re-
21 quest for the amendment of a certificate shall be treated in
22 the same manner as an original application for a certificate.
23 If the request is filed within 30 days after a material change
24 which requires the amendment, and if the requested amend-

1 ment is approved, then there shall be no interruption in the
2 period for which the certificate is in effect.

3 “(d) AMENDMENT OR REVOCATION OF CERTIFICATE
4 BY SECRETARY.—After notifying the association or export
5 trading company involved and after an opportunity for hear-
6 ing pursuant to section 554 of title 5, United States Code,
7 the Secretary, on his own initiative—

8 “(1) may require that the organization or oper-
9 ation of the association or export trading company be
10 modified to correspond with its certification, or

11 “(2) shall, upon a determination that the export
12 trade, export trade activities or methods of operation of
13 the association or export trading company no longer
14 meet the requirements of section 2 of this Act, revoke
15 the certificate or make such amendments as may be
16 necessary to satisfy the requirements of such section.

17 “(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
18 ATTORNEY GENERAL OR COMMISSION.—

19 “(1) The Attorney General or the Commission
20 may bring an action against an association or export
21 trading company or its members to invalidate, in whole
22 or in part, the certification on the ground that the
23 export trade, export trade activities or methods of op-
24 eration of the association or export trading company
25 fail or have failed, to meet the requirements of section

1 2 of this Act. The Attorney General or Commission
2 shall notify any association or export trading company
3 or member thereof, against which it intends to bring an
4 action for revocation, 30 days in advance, as to its
5 intent to file an action under this subsection. The dis-
6 trict court shall consider any issues presented in any
7 such action de novo and if it finds that the require-
8 ments of section 2 are not met, it shall issue an order
9 declaring the certificate invalid and any other order
10 necessary to effectuate the purposes of this Act and
11 the requirements of section 2.

12 “(2) Any action brought under this subsection
13 shall be considered an action described in section 1337
14 of title 28, United States Code. Pending any such
15 action which was brought during the period any ex-
16 emption is held in abeyance pursuant to section 2(c) of
17 this Act, the court may make such temporary restrain-
18 ing order or prohibition as shall be deemed just in the
19 premises.

20 “(3) No person other than the Attorney General
21 or Commission shall have standing to bring an action
22 against an association or export trading company or
23 their respective members for failure of the association
24 or export trading company or their respective export

1 trade, export trade activities or methods of operation to
2 meet the criteria of section 2 of this Act.

3 "SEC. 5. GUIDELINES.

4 "(a) INITIAL PROPOSED GUIDELINES.—Within 90
5 days after the enactment of the Export Trade Association
6 Act of 1980, the Secretary, after consultation with the Attor-
7 ney General and the Commission, shall publish proposed
8 guidelines for purposes of determining whether export trade,
9 export trade activities and methods of operation of an associ-
10 ation or export trading company will meet the requirements
11 of section 2 of this Act.

12 "(b) PUBLIC COMMENT PERIOD.—Following publica-
13 tion of the proposed guidelines, and any proposed revision of
14 guidelines, interested parties shall have 30 days to comment
15 on the proposed guidelines. The Secretary shall review the
16 comments and, after consultation with the Attorney General
17 and Commission, publish final guidelines within 30 days after
18 the last day on which comments may be made under the
19 preceding sentence.

20 "(c) PERIODIC REVISION.—After publication of the
21 final guidelines, the Secretary shall periodically review the
22 guidelines and, after consultation with the Attorney General,
23 and the Commission, propose revisions as needed.

24 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
25 ACT.—The promulgation of guidelines under this section

1 shall not be considered for purposes of subchapter II of chap-
2 ter 5 of title 5, United States Code, and section 553 of such
3 title shall not apply to their promulgation.

4 **"SEC. 6. ANNUAL REPORTS.**

5 "Every certified association or export trading company
6 shall submit to the Secretary an annual report, in such form
7 and at such time as he may require, which report updates
8 where necessary the information described by section 4(a) of
9 this Act.

10 **"SEC. 7. OFFICE OF EXPORT TRADE IN COMMERCE**
11 **DEPARTMENT.**

12 "The Secretary shall establish within the Department of
13 Commerce an office to promote and encourage to the great-
14 est extent feasible the formation of export trade associations
15 and export trading companies through the use of provisions of
16 this Act in a manner consistent with this Act.

17 **"SEC. 8. AUTOMATIC CERTIFICATION FOR EXISTING**
18 **ASSOCIATIONS.**

19 "The Secretary shall certify any export trade associ-
20 ation registered with the Federal Trade Commission as of
21 April 3, 1980, if such association, within 180 days after the
22 date of enactment of such Act, files with the Secretary an
23 application for certification as provided for in section 5 of this
24 Act, unless such application shows on its face that the associ-
25 ation is not eligible for certification under this Act.

1 "SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL
2 REPORT INFORMATION.

3 "(a) GENERAL RULE.—Portions of applications made
4 under section 4, including amendments to such applications,
5 and annual reports made under section 6 that contain trade
6 secrets or confidential business or financial information, the
7 disclosure of which would harm the competitive position of
8 the person submitting such information shall be confidential,
9 and, except as authorized by this section, no officer or em-
10 ployee, or former officer or employee, of the United States
11 shall disclose any such confidential information, obtained by
12 him in any manner in connection with his service as such an
13 officer or employee.

14 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
15 MISSION.—Whenever the Secretary believes that an appli-
16 cant may be eligible for a certificate, or has issued a certifi-
17 cate to an association or export trading company, he shall
18 promptly make available all materials filed by the applicant,
19 association or export trading company, including applications
20 and supplements thereto, reports of material changes, appli-
21 cations for amendments and annual reports, and information
22 derived therefrom. The Secretary shall make available appli-
23 cations, amendments thereto or annual reports, or informa-
24 tion derived therefrom, to the Attorney General or Commis-
25 sion, or any employee or officer thereof, for official use in
26 connection with an investigation or judicial or administrative

1 proceeding under this Act or the antitrust laws to which the
2 United States or the Commission is or may be a party. Such
3 information may only be disclosed by the Secretary upon a
4 prior certification that the information will be maintained in
5 confidence and will only be used for such official law enforce-
6 ment purposes.

7 **"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
8 **UNITED STATES OBLIGATIONS.**

9 "At such time as the United States undertakes binding
10 international obligations by treaty or statute, to the extent
11 that the operations of any export trade association or export
12 trading company, certified under this Act, are inconsistent
13 with such international obligations, the Secretary may re-
14 quire it to modify its operations so as to be consistent with
15 such international obligations.

16 **"SEC. 11. REGULATIONS.**

17 "The Secretary, after consultation with the Attorney
18 General and the Commission, shall promulgate such rules
19 and regulations as may be necessary to carry out the pur-
20 poses of this Act.

21 **"SEC. 12. TASK FORCE STUDY.**

22 "Seven years after the date of enactment of the Export
23 Trade Association Act of 1980, the President shall appoint,
24 by and with the advice and consent of the Senate, a task
25 force to examine the effect of the operation of this Act on

1 domestic competition and on United States international
2 trade and to recommend either continuation, revision, or ter-
3 mination of the Webb-Pomerene Act. The task force shall
4 have 1 year to conduct its study and to make its recommen-
5 dations to the President.”.

6 (2) REDESIGNATION OF SECTION 6.—The Act is
7 amended—

8 (A) by striking out “SEC. 6.” in section 6
9 (15 U.S.C. 66), and

10 (B) by inserting immediately before such sec-
11 tion the following:

12 “SEC. 14. SHORT TITLE.”.

13 **PART 3—ANTITRUST PROCEDURES**

14 **SIMPLIFICATION**

15 **SEC. 431. DEFINITIONS.**

16 For purposes of this part—

17 (1) The term “structural arrangement” means a
18 situation or course of action that affects the pattern of
19 ownership or control in industry.

20 (2) The term “conduct” means a practice that
21 may affect domestic competition but does not directly
22 affect the structure of ownership or control in industry.

23 (3) The term “disclosure” means a statement pub-
24 lished by the Attorney General or the Assistant Attor-
25 ney General for the antitrust division under section

1 5(a) describing conduct and structural arrangements re-
2 lating to export sales that will not be subject to crimi-
3 nal or civil prosecution under the antitrust laws.

4 (4) The term “antitrust laws” means the Sherman
5 Act, the Federal Trade Commission Act, the Clayton
6 Act, and any other Acts in pari materia.

7 **SEC. 432. STUDIES BY ATTORNEY GENERAL.**

8 (a) **IN GENERAL.**—The Attorney General, in consulta-
9 tion with the Secretary of Commerce and the heads of other
10 United States agencies with enforcement responsibility under
11 the antitrust laws, shall conduct studies to determine
12 whether—

13 (1) the conduct and structural arrangements em-
14 ployed in various countries by various types and sizes
15 of United States businesses to expand exports conflict
16 significantly with basic antitrust principles; and

17 (2) a more liberal enforcement policy for overseas
18 activities than would be appropriate for domestic trans-
19 actions would impede thorough implementation of the
20 legislative intent of the antitrust laws.

21 (b) **IDENTIFICATION OF CONDUCT AND STRUCTURAL**
22 **ARRANGEMENTS.**—On the basis of studies carried out under
23 subsection (a), or other information available to the Depart-
24 ment of Justice, the Attorney General shall identify conduct
25 and structural arrangements associated with particular types

1 of export sales which the Attorney General determines would
2 not warrant criminal or civil prosecution under the antitrust
3 laws by the Department of Justice.

4 (c) DEADLINE FOR INITIAL STUDIES.—The initial
5 studies made under subsection (a) shall be completed within 1
6 year after the date of enactment of this Act and shall be
7 updated annually.

8 **SEC. 433. PROCEDURES.**

9 (a) ATTORNEY GENERAL.—The Attorney General
10 shall—

11 (1) publish a description of conduct and structural
12 arrangements identified pursuant to section 432(b) as
13 not meriting criminal or civil prosecution under the
14 antitrust laws and shall make the published description
15 available to all potentially interested exporters; and

16 (2) establish procedures to assure a prompt re-
17 sponse to—

18 (A) petitions from individual exporters or
19 classes of exporters for the issuance of descrip-
20 tions under paragraph (1); and

21 (B) petitions from an individual exporter or
22 group of exporters for the issuance of a statement
23 of civil and criminal enforcement intentions con-
24 cerning specific conduct in which the petitioner
25 proposes to engage, or structural arrangements

1 the petitioner proposes to establish, in connection
2 with exports.

3 (b) SECRETARY OF COMMERCE.—The Secretary of
4 Commerce may intervene at any time to request that the
5 Attorney General publish a description under subsection
6 (a)(1) with respect to conduct or structural arrangements or
7 to reconsider a description published under such subsection.
8 Within 30 days after receiving such a request from the Sec-
9 retary, the Attorney General shall take whatever action he
10 determines to be appropriate with respect to the request and
11 inform the Secretary of the determination and action taken.
12 The action of the Attorney General shall be final and shall
13 not be subject to judicial review.

14 (c) FORMS AND PROCEDURES FOR OBTAINING DISCLO-
15 SURES.—The Attorney General shall establish appropriate
16 forms and procedures for the purpose of—

17 (1) communicating disclosures issued under sub-
18 section (a) to affected parties;

19 (2) informing exporters of specific actions they
20 must take to obtain disclosures pursuant to subsection
21 (a), or to be deemed covered by disclosures made pur-
22 suant to subsection (a)(2);

23 (3) determining actions exporters have taken in
24 reliance on such descriptions; and

1 (4) identifying problems associated with discharg-
2 ing the evaluation, disclosure, and monitoring functions
3 authorized under this Act.

4 (d) PROVISION OF LEGAL ASSISTANCE.—Upon re-
5 quest, the Secretary of Commerce may, on a reimbursable
6 basis, provide legal assistance to existing and potential ex-
7 porters who are unable to obtain specialized antitrust coun-
8 sel. Such assistance shall be limited to assistance in obtaining
9 enforcement intention disclosures provided for under subsec-
10 tion (a)(2).

11 (e) APPLICABILITY OF ADMINISTRATIVE PROCEDURE
12 ACT RULES.—Agency proceedings and agency actions (as
13 defined in paragraphs (12) and (13), respectively, of section
14 551 of title 5, United States Code) under this part shall not
15 be subject to subchapter II of chapter 5 of title 5, United
16 States Code (other than sections 552, 552a, and 552b).

17 SEC. 434. COMPLIANCE BY EXPORTERS.

18 (a) ANTITRUST EXEMPTION.—Notwithstanding any
19 other provision of law, an exporter shall not be subject to
20 civil or criminal prosecution under the antitrust laws by any
21 Federal agency if—

22 (1) the exporter, or group of exporters, notifies
23 the Attorney General, pursuant to procedures estab-
24 lished under section 433(c)(2), that the exporter or
25 group intends to engage in conduct or to establish

1 structural arrangements which have been designated
2 by the Attorney General as conduct or structural ar-
3 rangements not subject to civil or criminal prosecution
4 under the antitrust laws, and the Attorney General
5 does not object to the proposed conduct or arrange-
6 ment within 30 days and inform such exporter, or
7 group of exporters, of the specific reasons why the pro-
8 posed conduct and structural arrangements are not
9 covered by disclosures made pursuant to section
10 433(a); or

11 (2) the exporter requests a statement of civil and
12 criminal enforcement intentions concerning a particular
13 transaction pursuant to section 433(a)(2)(B), and within
14 60 days after the date of the request—

15 (A) receives an approval from the Attorney
16 General, or

17 (B) does not receive an objection in writing
18 from the Attorney General to the transaction set-
19 ting forth the specific reasons why the transaction
20 is in conflict with specific provisions of the anti-
21 trust laws.

22 (b) OBJECTIONS TO PROPOSED ACTIVITY.—Whenever
23 the Attorney General objects to proposed conduct or struc-
24 tural arrangements under paragraph (1) or (2) of subsection
25 (a)—

1 (1) the Attorney General shall notify the exporter
2 or group of exporters of such objections within 30 days
3 (60 days in the case of a request described in para-
4 graph (2) of such subsection) of receiving notification
5 regarding the proposed conduct or structural arrange-
6 ments and shall notify the exporter or group of export-
7 ers involved that they may request that a hearing be
8 held on the objections to the proposed conduct or
9 structural arrangement;

10 (2) the exporter or exporters involved shall notify
11 the Attorney General within 15 days after receiving
12 the objections if they wish to have a hearing;

13 (3) the Attorney General shall conduct any such
14 hearing within 30 days after the date on which the re-
15 quest for a hearing under paragraph (2) is received by
16 the Department of Justice;

17 (4) such hearing shall continue for no more than
18 30 days; and

19 (5) the Attorney General shall make the disclo-
20 sure determination within 15 days after the completion
21 of such hearing, notify the exporter or group of export-
22 ers of the determination, and publish the determination.

23 (c) FINALITY OF DETERMINATION.—A determination
24 by the Attorney General under subsection (b) shall be final
25 and shall not be subject to judicial review.

1 **SEC. 435. INJUNCTIONS.**

2 The Attorney General may request any United States
3 district court to issue an injunction regarding a disclosure
4 under section 433(a)(2) of this Act, when the Attorney Gen-
5 eral determines that—

6 (1) the activity of the exporter or group of export-
7 ers is acting outside of the scope of the disclosure;

8 (2) the circumstances under which the disclosure
9 was issued have substantially changed; or

10 (3) the disclosure was issued upon inaccurate or
11 fraudulent information.

12 **SEC. 436. REPORTS AND DISCLOSURES.**

13 On December 31 of each year, the Attorney General,
14 the Secretary of Commerce, and the heads of other United
15 States agencies directly affected by disclosures under this
16 part shall each file with the Congress, and make public, a
17 detailed report of—

18 (1) all actions by the appropriate department or
19 agency, or by other interested public and private par-
20 ties, taken pursuant to this part;

21 (2) any problems associated with the implementa-
22 tion of this part;

23 (3) the specific plans of the appropriate depart-
24 ment or agency to carry out its responsibilities (if any)
25 under this part in the next fiscal year; and

1 (4) any recommendations for amendment of this
2 part.

3 **SEC. 437. AUTHORIZATION OF APPROPRIATIONS.**

4 (a) **ATTORNEY GENERAL.**—There are authorized to be
5 appropriated to the Attorney General such sums as may be
6 necessary for the purpose of carrying out this part.

7 (b) **SECRETARY OF COMMERCE.**—There are authorized
8 to be appropriated to the Secretary of Commerce such sums
9 as may be necessary for fiscal year 1981 for the sole purpose
10 of covering costs associated with initial implementation of
11 section 433(d) of this part.

12 **SEC. 438. EFFECTIVE DATE.**

13 This part shall take effect on October 1, 1980.

14 **TITLE V—AMENDMENTS TO OTHER LAWS THAT**
15 **HINDER EXPORTS**

16 **PART 1—FINDINGS AND CONCLUSIONS**

17 **SEC. 501. FINDINGS AND CONCLUSIONS.**

18 (a) **FINDINGS.**—The Congress finds that—

19 (1) there are a number of United States laws, reg-
20 ulations, controls, and policies that have been instituted
21 to serve legitimate domestic economic, political and
22 ethical needs but which have little regard for their cost
23 in terms of an adverse impact on exports;

24 (2) the effects of some of these laws, regulations
25 and policies have been to prohibit exports, raise the

1 cost of producing goods for export, increase the uncer-
2 tainty or cost of export transactions, and lengthen the
3 time and increase the risk of negotiating and complet-
4 ing export transactions;

5 (3) it is in the national interest to avoid restraints
6 on exports except when national security or foreign
7 policy considerations clearly outweigh the total costs of
8 the impairment to trade;

9 (4) the unpredictable and unclear nature of the en-
10 forcement, interpretation and jurisdiction of many of
11 these laws and regulations has contributed to a climate
12 of debilitating uncertainty among businessmen involved
13 in exports; and

14 (5) the United States agencies responsible for en-
15 forcement or interpretation of the above laws and poli-
16 cies do not sufficiently coordinate interpretation and
17 enforcement practices among themselves, or with other
18 agencies responsible for international trade policy,
19 export promotion, foreign policy and international mon-
20 etary policy.

21 (b) CONCLUSIONS.—The Congress concludes that—

22 (1) laws and regulations promoting and constrain-
23 ing international trade should be designed to reflect dif-
24 ferences in enterprise size, trade experience, industry
25 type and product destinations in order to minimize

1 costs and maximize benefits of such laws and regula-
2 tions absorbed by the private sector;

3 (2) export impact statements should be required
4 for all policies and regulations affecting exports, to de-
5 termine as accurately as possible the extent of damage
6 to our trading interests caused by them, and to weigh
7 these costs against foreign policy considerations;

8 (3) some of the problems addressed in the laws
9 and regulations demand an international approach and
10 appropriate international agreements should be initiated
11 and sought by the United States agencies responsible
12 for trade treaties and by the President; and

13 (4) business should be allowed to obtain promptly
14 and efficiently binding statements of interpretation and
15 applications.

16 **PART 2—BUSINESS ACCOUNTING AND TRADE**

17 **SIMPLIFICATION**

18 **SEC. 521. FINDINGS AND CONCLUSIONS.**

19 (a) FINDINGS.—The Congress finds that—

20 (1) the enactment of the Foreign Corrupt Prac-
21 tices Act of 1977 was a positive and significant step
22 toward the important objective of prohibiting bribery of
23 foreign government officials by United States compa-
24 nies in order to obtain, retain, or direct business;

1 (2) the unpredictable and unclear nature of the en-
2 forcement, interpretation, and jurisdiction of the For-
3 eign Corrupt Practices Act of 1977 by United States
4 agencies has caused unnecessary confusion among ex-
5 isting and potential exporters as to the scope of legiti-
6 mate overseas business activities;

7 (3) the Foreign Corrupt Practices Act of 1977
8 does not reflect important differences in competitive
9 conditions among various cultures and country markets
10 for different products and services;

11 (4) the accounting standards requirements of the
12 Foreign Corrupt Practices Act of 1977, which apply to
13 all issuers of securities regardless of size, market, or
14 the presence of international transactions, are exces-
15 sive and result in costly and unnecessary paperwork
16 burdens;

17 (5) United States agencies responsible for enforce-
18 ment of the Foreign Corrupt Practices Act of 1977 do
19 not sufficiently coordinate interpretation and enforce-
20 ment practices among themselves, or with other agen-
21 cies responsible for international trade policy, export
22 promotion, foreign policy, international monetary
23 policy, and other related civil and criminal statutes;
24 and

1 (6) it is in the best interests of all countries to
2 maintain responsible standards of corporate conduct in
3 foreign markets to preserve free and equitable trading
4 practices.

5 (b) CONCLUSIONS.—The Congress concludes that—

6 (1) the principal objectives of the Foreign Corrupt
7 Practices Act of 1977 are desirable, beneficial, and im-
8 portant to our Nation as well as to our relationships
9 with our trading partners, and these objectives should
10 remain the central intent of the Act;

11 (2) exporters should not be subject to unclear,
12 conflicting, and potentially damaging demands by di-
13 verse United States agencies responsible for enforce-
14 ment of the Foreign Corrupt Practices Act of 1977;

15 (3) conduct and structural arrangements of United
16 States exporters should be permitted, if they do not
17 have a negative impact on our commerce with foreign
18 nations, restrict fair competition, or otherwise conflict
19 with the basic principles of the Foreign Corrupt Prac-
20 tices Act of 1977;

21 (4) the accounting standards requirements of the
22 Foreign Corrupt Practices Act of 1977 should be inte-
23 grated with concepts of materiality accepted by the ac-
24 counting profession, and should take into consideration
25 the size and operations of issuers of securities;

(5) legal interpretations and general compliance and enforcement practices associated with the Foreign Corrupt Practices Act of 1977 should be developed in accordance with considerations underlying foreign policy relations, international trade, export promotion, international monetary policy, and other related civil and criminal statutes; and

(6) a solution to the problem of corrupt payments by firms to obtain or retain business demands on international approach, accordingly appropriate international agreements should be initiated and sought by the United States agencies responsible for trade agreements and by the President.

SEC. 522. AMENDMENT OF SHORT TITLE.

Section 101 of the Foreign Corrupt Practices Act of 1977 is amended to read as follows:

“SHORT TITLE

“SEC. 101. This title may be cited as the ‘Business Practices and Records Act’.”.

SEC. 523. ACCOUNTING STANDARDS.

(a) **RECORDKEEPING.**—Section 13(b)(2) of the Securities Exchange Act of 1934 is amended by striking out clauses (A) and (B) and inserting in lieu thereof the following:

“(A) make and keep books, accounting records, and accounts which reflect the transactions of the

1 issuer (including the disposition of assets, equities, and
2 liabilities) in all material respects so as (i) to permit
3 preparation of financial statements in conformity with
4 generally accepted accounting principles or other crite-
5 ria applicable to such statements, and (ii) to maintain
6 accountability for such assets, equities, and liabilities;
7 and

8 “(B) devise and maintain a system of internal ac-
9 counting controls sufficient to provide reasonable assur-
10 ances that in all material respects and in accordance
11 with generally accepted accounting principles—

12 “(i) transactions are executed in accord-
13 ance with management’s general or specific
14 authorization;

15 “(ii) transactions are recorded as necessary
16 (I) to permit preparation of financial statements in
17 conformity with generally accepted accounting
18 principles or any other criteria applicable to such
19 statements, and (II) to maintain accountability for
20 assets;

21 “(iii) access to assets is permitted only in ac-
22 cordance with management’s general or specific
23 authorization; and

24 “(iv) the recorded accountability for assets is
25 compared with the existing assets at reasonable

1 intervals and appropriate action is taken with re-
2 spect to any differences.”.

3 (b) LIABILITY.—Section 13(b) of the Securities Ex-
4 change Act of 1934 is amended by adding at the end thereof
5 the following:

6 “(4) An issuer shall be liable in any action or proceeding
7 arising under paragraph (2) only for knowingly falsifying, or
8 causing to be falsified, any book, accounting record, or ac-
9 count described therein or for the intentionally wrongful
10 maintenance of a system of internal accounting controls
11 which is not consistent with the purposes of paragraph (2), or
12 any intentionally wrongful attempt to circumvent the internal
13 accounting controls established pursuant to such paragraph.

14 “(5) Where an issuer holds 50 per centum or less of the
15 equity capital of a domestic or foreign firm, the provisions of
16 paragraph (2) require only that the issuer proceed in good
17 faith to use its influence, to the extent reasonable under the
18 issuer’s circumstances, including the relative degree of its
19 ownership or control over the domestic or foreign firm and
20 under the laws and practices governing the business oper-
21 ations of the country in which such firm is located, to cause
22 transactions and dispositions of assets having a material
23 effect on the issuer’s interest in the foreign controlled firm to
24 be carried out consistent with the purposes of such para-
25 graph. Such an issuer shall be presumed conclusively to have

1 complied with the provisions of paragraph (2) by demonstrat-
2 ing good faith efforts to use such influence.”.

3 **SEC. 524. REPEAL OF SECTION 30A.**

4 (a) **IN GENERAL.**—Section 30A of the Securities Ex-
5 change Act of 1934 is repealed.

6 (b) **CONFORMING AMENDMENTS.**—

7 (1) Section 104 of the Business Practices and
8 Records Act is amended by inserting “or any issuer”
9 after “any domestic concern” whenever it appears
10 except in section 104(b)(1)(B).

11 (2) Section 104(a) of such Act is amended by
12 striking out “, other than an issuer which is subject to
13 section 30A of the Securities Exchange Act of 1934”.

14 (3) Section 104(b)(1)(B) of such Act is amended
15 by inserting “or any issuer which willfully violates sub-
16 section (a)” before “shall, upon conviction”.

17 **SEC. 525. DEFINITIONS.**

18 (a) **SECURITIES EXCHANGE ACT AMENDMENT.**—
19 Section 13(b) of the Securities Exchange Act of 1934 is
20 amended by adding at the end thereof the following:

21 “(6) For the purpose of this section, the term
22 ‘reasonable assurances’ means justifiable measures, in
23 light of the benefits to be derived from any costs in-
24 curred and appropriate in view of the objective sought

1 to be achieved, taken to ensure that the purposes of
2 paragraph (2) will be accomplished.

3 “(7) For the purpose of this section, the term ‘in
4 all material respects’ means materiality as measured in
5 the preparation and presentation of financial statements
6 of the issuer.”.

7 (b) BUSINESS PRACTICES AND RECORDS ACT AMEND-
8 MENT.—The Business Practices and Records Act is amended
9 by inserting after section 104(d)(3) the following:

10 “(4) The term ‘issuer’ means any issuer which
11 has a class of securities registered pursuant to section
12 12 of the Securities Exchange Act of 1934 or which is
13 required to file reports under section 15(d) of the Secu-
14 rities Exchange Act of 1934.

15 “(e) For the purpose of this Act, an offer, payment,
16 promise to pay, or authorization of the payment of any
17 money, or offer, gift, promise to give, or authorization of the
18 giving of anything of value shall not include an item of value
19 that constitutes, or is intended as no more than, an item
20 given as a courtesy, a token of regard and esteem, or in
21 return for hospitality, and is not meant to include marketing
22 education, or expenses related to the demonstration or expla-
23 nation of products, or operations of an issuer or a domestic
24 concern, including travel and lodging, if such marketing ac-
25 tivities, demonstrations, or explanations, or related expenses

1 pertain to the business presentation associated with the sell-
2 ing of goods and services.

3 “(f) Nothing in this Act shall prohibit any offer, pay-
4 ment, promise to pay, or authorization of the payment of any
5 money, or offer, gift, promise to give, or authorization of the
6 giving of anything of value which is lawful under the laws
7 and regulations of the country, in which the foreign official,
8 who is the intended recipient serves or in which the foreign
9 political party or official thereof or foreign political candidate
10 who is the intended recipient principally operates.”.

11 **SEC. 526. AUTHORITY TO ISSUE GUIDELINES.**

12 Title I of the Business Practices and Records Act is
13 amended by adding at the end thereof the following:

14 “GUIDELINES AND GENERAL PROCEDURES FOR
15 COMPLIANCE

16 “SEC. 105. (a) Not later than 6 months after the date of
17 enactment of this section, the Attorney General, after consul-
18 tation with other Federal agencies and representatives of the
19 business community, shall issue—

20 “(1) guidelines describing specific types of conduct
21 and structural arrangements associated with common
22 types of export sales arrangements and business con-
23 tracts which the Attorney General determines consti-
24 tute compliance with the provisions of section 104 of
25 this Act; and

1 “(2) general precautionary procedures which issu-
2 ers or domestic concerns may use on a voluntary basis
3 to ensure compliance with this Act, and to create a re-
4 buttable presumption of compliance with this Act.

5 The guidelines and procedures referred to in the preceding
6 sentence shall be issued in accordance with sections 551
7 through 557 of title 5, United States Code.

8 “(b) The Attorney General, after consultation with
9 other Federal agencies and representatives from the business
10 community, shall establish a Business Practices and Records
11 Act Review Procedure for the purpose of providing responses
12 to specific inquiries concerning enforcement intentions under
13 this Act. The Attorney General shall issue opinions, within
14 30 days, in response to requests from issuers and domestic
15 concerns, regarding compliance with the requirements of the
16 provisions of section 104 of this Act. An opinion that certain
17 conduct does not involve a violation shall be final and binding
18 on all parties, subject to the discovery of new evidence.
19 When appropriate, and at reasonable intervals, the responses
20 derived from the review procedure will be reviewed by the
21 Attorney General to determine whether such compilation of
22 responses should be included in a new guideline pursuant to
23 subsection (a).

24 “(c) Any document or other material provided to, re-
25 ceived by, or prepared in the Department of Justice, or any

1 other department or agency of the United States Govern-
2 ment, in connection with a request by an issuer or domestic
3 concern for a statement of present enforcement intentions
4 under the Business Practices and Records Review Procedure
5 Act shall be exempt from disclosure under section 552 of title
6 5, United States Code, regardless of whether the Department
7 responds to such a request or the applicant withdraws such
8 request prior to receiving a response. If any request is with-
9 drawn or does not receive a response from the Justice De-
10 partment, any document or other material submitted in con-
11 nection with such request shall be returned to the requesting
12 party, and any other document or other material submitted
13 to, received by, or prepared by the Attorney General in con-
14 sideration of such request shall either be returned if the docu-
15 ment or material originated from a source outside the United
16 States Government or shall be destroyed. Within 60 days
17 after the withdrawal of a request or the communication of the
18 decision not to respond to the request, the Department of
19 Justice shall certify to the requesting party that any such
20 document or material has been returned to the requesting
21 party or the originating non-governmental party or has been
22 destroyed in accordance with this section. The Attorney
23 General shall protect the privacy of each applicant, and all
24 documents supplied are for use by the Justice Department
25 and the Securities Exchange Commission only. The Review

1 Procedure shall be developed and instituted in accordance
2 with sections 551 through 557 and 701 through 706 of title
3 5, United States Code.

4 “(d) The Attorney General shall make a special effort to
5 provide timely compliance guidance to potential exporters,
6 and smaller businesses, who as a practical matter are unable
7 to obtain specialized counsel on issues pertaining to this Act.
8 Such assistance shall be limited to requests for enforcement
9 intention disclosures provided for under this Act, and expla-
10 nations of accounting standards requirements, and payments
11 and practices requirements.

12 “(e)(1) On September 1 of each year the Attorney Gen-
13 eral shall transmit to the Congress and make public a de-
14 tailed report on all actions which it and other interested
15 public and private parties have taken pursuant to this Act,
16 along with its views on problems associated with implemen-
17 tation, its plans for the next fiscal year to further implement
18 the Act, and recommendations for amendment.

19 “(2) On September 1 of each year the Securities and
20 Exchange Commission shall file with the Congress a detailed
21 report on all actions which it has taken pursuant to section
22 13(b) of the Securities Exchange Act, its views on problems
23 associated with implementation, its plans for the next fiscal
24 year to further implement such section, and its recommenda-
25 tions for amendment.”.

1 SEC. 527. CONFORMING CHANGE IN INTERNAL REVENUE
2 CODE.

3 Paragraph (1) of section 162(c) of the Internal Revenue
4 Code of 1954 is amended by striking out "the laws of the
5 United States if such laws were applicable to such payment
6 and to such official or employee" and inserting in lieu thereof
7 "the Business Practices and Records Act".

8 SEC. 528. INTERNATIONAL AGREEMENTS.

9 (a) NEGOTIATIONS.—It is the sense of the Congress
10 that the President should pursue the negotiation of bilateral
11 and multilateral agreements among the largest possible
12 number of nations which would establish standards of con-
13 duct for international business practices and which would
14 create a process by which problems and conflicts associated
15 with such practices could be resolved, and to explore through
16 negotiations an international agreement for rates of
17 commissions.

18 (b) REPORT.—It is the sense of the Congress that on
19 September 1, 1981, the President shall report to Congress on
20 the progress of these negotiations, and those steps which the
21 Administration and Congress should consider taking in the
22 event that the negotiations referred to in subsection (a) do not
23 successfully eliminate the competitive disadvantage of United
24 States business. Within 60 days of receipt of the President's
25 report, Congress shall begin a full oversight review of the
26 Business Practices and Records Act, including its effective-

1 ness in fulfilling its goals and purposes, effects upon export
2 promotion, United States competitiveness, foreign policy re-
3 lations, small business considerations, costs of compliance,
4 and appropriateness of penalties and those steps set out in
5 the report to Congress as provided in the preceding sentence.

6 **PART 3—EXPORT COMPETITIVENESS STATEMENTS;**

7 **PAPERWORK**

8 **SEC. 531. EXPORT COMPETITIVENESS STATEMENTS.**

9 (a) **IN GENERAL.**—Whenever an issuing authority takes
10 a significant action which, in the judgment of the issuing au-
11 thority, could affect adversely exports of United States goods
12 and services, or the international competitive position of the
13 United States and its exporters, he shall include in any docu-
14 ment embodying or giving effect to such action an export
15 competitiveness impact statement.

16 (b) **DEFINITIONS.**—For purposes of this section—

17 (1) **SIGNIFICANT ACTION.**—The term “significant
18 action” includes, but is not limited to—

19 (A) rulemaking (as defined in paragraph (5)
20 of section 551 of title 5, United States Code,

21 (B) promulgating regulations,

22 (C) developing and implementing programs,

23 and

24 (D) proclamations and orders issued by the
25 President.

(2) EXPORT COMPETITIVENESS IMPACT STATEMENT.—The term “export competitiveness statement” means a written statement which includes, but is not limited to, an analysis of—

(A) whether the significant action is a unilateral action on the part of the United States or part of a multilateral action by several countries,

(B) the estimated value of United States exports which will be affected by the action,

(C) the industries which will be affected by the action,

(D) any efforts made by the issuing authority to solicit the views of affected industries and of the views of such industries,

(E) alternative plans of action and the reasons for not choosing any such alternative plan, and

(F) whether the effect, directly or indirectly, of the action will be to give to foreign competitors, including domestic affiliates of foreign competitors, an advantage or right which would not be enjoyed absent such action.

(3) ISSUING AUTHORITY.—The term “issuing authority” means the President and the head of any de-

1 partment or agency of the executive branch of the
2 United States Government.

3 (c) NO RIGHT OF ACTION CREATED.—This section
4 does not confer any right of action on any person to stay the
5 development, preparation, issuance, or implementation of any
6 significant action.

7 SEC. 532. REDUCTION OF EXPORT PAPERWORK.

8 (a) FINDINGS.—The Congress finds that an average
9 export shipment requires as many as 46 different documents
10 and 360 copies and may cost as much as \$375 for documen-
11 tation alone. Such voluminous paperwork requirements may
12 act as a deterrent to exports.

13 (b) PAPERWORK TO BE REDUCED.—It is the sense of
14 Congress that export paperwork must be reduced to encour-
15 age export sales. All agencies shall minimize the burden of
16 paperwork and reporting requirements to the greatest extent
17 feasible, with particular reference to small businesses and
18 new-to-market exporters, and reporting requirements shall be
19 designed with reference to the most recent information proc-
20 essing technology.

21 TITLE VI—EXPORT AWARENESS AND EXPORT
22 PROMOTION PROGRAMS

23 PART 1—FINDINGS; CONCLUSIONS

24 SEC. 601. STATEMENT OF FINDINGS AND CONCLUSIONS.

25 (a) FINDINGS.—The Congress finds that—

1 (1) development of a greater awareness of the
2 benefits of exports and programs for the promotion of
3 exports are critical elements in the improvement of our
4 export performance;

5 (2) there is a widespread lack of understanding of
6 the importance of trade and exports to the financial
7 and economic vitality of the United States;

8 (3) many United States firms are unaware or un-
9 interested in export sales opportunities, or lack the
10 marketing experience to successfully penetrate foreign
11 markets;

12 (4) the Federal Government is unable to carry the
13 whole burden of achieving expansion of exports;

14 (5) substantial long-term support from business,
15 labor, educational institutions, State and local govern-
16 ments, port authorities, banks, media, and other sectors
17 of the general public is required to develop and main-
18 tain effective education and trade promotion programs;

19 (6) services, including returns on overseas invest-
20 ments, are an increasingly important factor in the
21 United States trade balance; but the rate of growth of
22 service exports is below that of several of our industri-
23 alized competitors;

24 (7) only 10 percent of the United States firms ca-
25 pable of exporting are doing so, while over 90 percent

1 of exports are accounted for by relatively few
2 companies;

3 (8) total and per capita export promotion assist-
4 ance extended by the United States Government to ex-
5 porters is significantly below the average extended by
6 the governments of foreign industrialized nations;

7 (9) export trade intermediaries, such as trading
8 companies, can achieve economies of scale and acquire
9 expertise enabling them to export goods and services
10 profitably, at low per unit cost to producers;

11 (10) the United States lacks well-developed export
12 trade intermediaries to package export trade services
13 at reasonable prices (exporting services are fragmented
14 into a multitude of separate functions; companies at-
15 tempting to offer comprehensive export trade services
16 lack financial leverage to reach a significant portion of
17 potential United States exporters);

18 (11) the development of export trading companies
19 in the United States has been hampered by insular
20 business attitudes and by Government regulations; and

21 (12) if United States export trading companies are
22 to be successful in promoting United States exports
23 and in competing with foreign trading companies, they
24 must be able to draw on the resources, expertise, and

1 knowledge of the United States banking system, both
2 in the United States and abroad.

3 (b) CONCLUSIONS.—Congress concludes that—

4 (1) the emphasis on export promotion programs
5 should be on encouraging public-private sector
6 cooperation;

7 (2) because of its national and international scope,
8 the Federal Government can and should play a key
9 role in guiding other sectors to achieve common export
10 goals through continuation and establishment of broad-
11 based programs to educate the public on exporting and
12 to assist United States exporters to introduce and pro-
13 mote their products and services overseas;

14 (3) increased efforts must be made by the Federal
15 Government to enlist the assistance of private sector
16 organizations in assisting United States exporters, and
17 funding and other incentives must be made available in
18 such reasonable, effective, and efficient amounts to sus-
19 tain such activities;

20 (4) private organizations familiar with exporters,
21 such as chambers of commerce, American chambers of
22 commerce abroad, trade associations, and financial in-
23 stitutions should bear a larger share of the burden of
24 educating the public on the importance of export ex-
25 pansion and insuring that public concerns are well un-

1 derstood by United States Government officials admin-
2 istering export-related programs;

3 (5) all trade-related government agencies should
4 consult with appropriate segments of the private sector
5 on all economic policies and improve the liaison be-
6 tween government agencies and American business or-
7 ganizations and individual exporters;

8 (6) United States Government marketing assist-
9 ance programs should emphasize servicing individual
10 firms in preference to the use of resources for general-
11 ized information and assistance;

12 (7) service exports must be provided assistance
13 equivalent to the export of manufacturers, with new
14 assistance programs developed where service export-
15 ers' needs differ and can be properly identified;

16 (8) service exports should be encouraged by the
17 United States Government, and export policy should be
18 based on the principle of reciprocal export opportuni-
19 ties and treatment;

20 (9) support for export education programs should
21 be increased through Federal and non-Federal pro-
22 grams that are supplemented by related programs de-
23 signed to facilitate exporting, such as foreign language
24 training and translation and international financing;

(10) special assistance should be provided to new-to-export firms, particularly smaller or medium-sized firms that may lack the resources to export on an individual basis;

(11) financial assistance, through special loan and guaranty programs, should be made available to exporters; and

(12) financial support for export promotion programs should be given a higher budgetary and policy priority to make financial assistance and incentive programs equivalent to those of our foreign industrial competitors.

PART 2—EXPORT TRADING COMPANIES

SEC. 621. SHORT TITLE.

This part may be cited as the “Export Trading Company Act of 1980”.

SEC. 622. PURPOSE.

The purpose of this part is to increase United States exports of products and services by encouraging more efficient provision of export trade services to American producers and suppliers.

SEC. 623. DEFINITIONS.

(a) **IN GENERAL.**—As used in this part—

(1) **EXPORT TRADE.**—The term “export trade” means trade or commerce in goods sourced in the

1 United States or services produced in the United
2 States exported, or in the course of being exported,
3 from the United States to any foreign nation.

4 (2) GOODS PRODUCED IN THE UNITED
5 STATES.—The term “goods produced in the United
6 States” means tangible property manufactured, pro-
7 duced, grown, or extracted in the United States, the
8 cost of the imported raw materials and components
9 thereof shall not exceed 50 percent of the sales price.

10 (3) SERVICES PRODUCED IN THE UNITED
11 STATES.—The term “services produced in the United
12 States” includes, but is not limited to accounting,
13 amusement, architectural, automatic data processing,
14 business, communications, construction franchising and
15 licensing, consulting, engineering, financial, insurance,
16 legal, management, repair, tourism, training, and
17 transportation services, not less than 50 percent of the
18 sales or billings of which is provided by United States
19 citizens or is otherwise attributable to the United
20 States.

21 (4) EXPORT TRADE SERVICES.—The term
22 “export trade services” includes, but is not limited to,
23 consulting, international market research, advertising,
24 marketing, insurance, product research and design,
25 legal assistance, transportation, including trade docu-

1 mentation and freight forwarding, communication and
2 processing of foreign orders to and for exporters and
3 foreign purchasers, warehousing, foreign exchange, and
4 financing when provided in order to facilitate the
5 export of goods or services produced in the United
6 States.

7 (5) EXPORT TRADING COMPANY.—The term
8 “export trading company” means a company which
9 does business under the laws of the United States or
10 any State and which is organized and operated princi-
11 pally for the purposes of—

12 (A) exporting goods or services produced in
13 the United States; and

14 (B) facilitating the exportation of goods and
15 services produced in the United States by unaffil-
16 iated persons by providing one or more export
17 trade services.

18 (6) UNITED STATES.—The term “United States”
19 means the several States of the United States, the Dis-
20 trict of Columbia, the Commonwealth of Puerto Rico,
21 the Virgin Islands, American Samoa, Guam, the Com-
22 monwealth of the Northern Mariana Islands, and the
23 Trust Territory of the Pacific Islands.

24 (7) SECRETARY.—The term “Secretary” means
25 the Secretary of Commerce.

1 (8) COMPANY.—The term “company” means
2 any corporation, partnership, association, or similar
3 organization.

4 (b) FURTHER DEFINITION.—The Secretary is author-
5 ized, by regulation, to further define such terms consistent
6 with this section.

7 **SEC. 624. FUNCTIONS OF THE SECRETARY OF COMMERCE.**

8 The Secretary shall promote and encourage the forma-
9 tion and operation of export trading companies by providing
10 information and advice to interested persons and by facilitat-
11 ing contact between producers of exportable goods and serv-
12 ices and firms offering export trade services.

13 **SEC. 625. OWNERSHIP OF EXPORT TRADING COMPANIES BY**
14 **BANKS, BANK HOLDING COMPANIES, AND IN-**
15 **TERNATIONAL BANKING CORPORATIONS.**

16 (a) DEFINITIONS.—For the purpose of this section—

17 (1) BANKING ORGANIZATION.—The term “bank-
18 ing organization” means any State bank, national
19 bank, Federal savings bank, bankers’ bank, bank hold-
20 ing company, Edge Act Corporation, or Agreement
21 Corporation.

22 (2) STATE BANK.—The term “State bank” means
23 any bank which is incorporated under the laws of any
24 State, any territory of the United States, the Common-
25 wealth of Puerto Rico, Guam, American Samoa, the

1 Commonwealth of the Northern Mariana Islands, or
2 the Virgin Islands, or any bank (except a national
3 bank) which is operating under the Code of Law for
4 the District of Columbia (hereinafter referred to as a
5 "District bank").

6 (3) STATE MEMBER BANK.—The term "State
7 member bank" means any State bank, including a
8 bankers' bank, which is a member of the Federal Re-
9 serve System.

10 (4) STATE NONMEMBER INSURED BANK.—The
11 term "State nonmember insured bank" means any
12 State bank, including a bankers' bank, which is not a
13 member of the Federal Reserve System, but the depos-
14 its of which are insured by the Federal Deposit Insur-
15 ance Corporation.

16 (5) BANKERS' BANK.—The term "bankers' bank"
17 means any bank which (A) is organized solely to do
18 business with other financial institutions, (B) is owned
19 primarily by the financial institutions with which it
20 does business, and (C) does not do business with the
21 general public.

22 (6) BANK HOLDING COMPANY.—The term "bank
23 holding company" has the same meaning as in the
24 Bank Holding Company Act of 1956.

(7) EDGE ACT CORPORATION.—The term “Edge Act Corporation” means a corporation organized under section 25(a) of the Federal Reserve Act.

(8) AGREEMENT CORPORATION.—The term “Agreement Corporation” means a corporation operating subject to section 25 of the Federal Reserve Act.

(9) APPROPRIATE FEDERAL BANKING AGENCY.—The term “appropriate Federal banking agency” means—

(A) the Comptroller of the Currency with respect to a national bank or any District bank;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank except a District bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank.

In any situation where the banking organization holding or making an investment in an export trading company is a subsidiary of another banking organization which is subject to the jurisdiction of another agency, and some form of agency approval or notification is re-

1 quired, such approval or notification need only be ob-
2 tained from or made to, as the case may be, the appro-
3 priate Federal banking agency for the banking organi-
4 zation making or holding the investment in the export
5 trading company.

6 (10) CAPITAL AND SURPLUS.—The term “capital
7 and surplus” means paid in and unimpaired capital and
8 surplus, and includes undivided profits and such other
9 items as the appropriate Federal banking agency may
10 deem appropriate.

11 (11) AFFILIATE.—An “affiliate” of a banking or-
12 ganization or export trading company is a person who
13 controls, is controlled by, or is under common control
14 with such banking organization or export trading
15 company.

16 (12) CONTROL; SUBSIDIARY.—The terms “con-
17 trol” and “subsidiary” shall have the same meanings
18 assigned to those terms in section 2 of the Bank Hold-
19 ing Company Act of 1956, and the terms “controlled”
20 and “controlling” shall be construed consistently with
21 the term “control” as defined in section 2 of the Bank
22 Holding Company Act of 1956.

23 (13) EXPORT TRADING COMPANY.—The term
24 “export trading company” has the same meaning as in
25 section 623(a)(5) of this Act, or means any company

1 organized and operating principally for the purpose of
2 providing export trade services, as defined in section
3 623(a)(4) of this Act.

4 (b) EXPORT TRADING COMPANY INVESTMENTS BY
5 BANKING ORGANIZATIONS.—

6 (1) INVESTMENT PERMITTED.—Notwithstanding
7 any prohibition, restriction, limitation, condition, or re-
8 quirement of any other law, a banking organization,
9 subject to the limitations of subsection (c) and the pro-
10 cedures of this subsection, may invest directly and indi-
11 rectly in the aggregate, up to 5 percent of its consoli-
12 dated capital and surplus (25 percent in the case of an
13 Edge Act Corporation or Agreement Corporation not
14 engaged in banking) in the voting stock or other evi-
15 dences of ownership of one or more export trading
16 companies. A banking organization may—

17 (A) invest up to an aggregate amount of
18 \$10,000,000 in one or more export trading com-
19 panies without the prior approval of the appropri-
20 ate Federal banking agency, if such investment
21 does not cause an export trading company to
22 become a subsidiary of the investing banking or-
23 ganization; and

24 (B) make investments in excess of an aggre-
25 gate amount of \$10,000,000 in one or more

1 export trading companies, or make any invest-
2 ment or take any other action which causes an
3 export trading company to become a subsidiary of
4 the investing banking organization or which will
5 cause more than 50 percent of the voting stock of
6 an export trading company to be owned or con-
7 trolled by banking organizations, only with the
8 prior approval of the appropriate Federal banking
9 agency.

10 Any banking organization which makes an investment
11 under authority of clause (A) of the preceding sentence
12 shall promptly notify the appropriate Federal banking
13 agency of such investment and shall file such reports
14 on such investment as such agency may require. If,
15 after receipt of any such notification, the appropriate
16 Federal banking agency determines, after notice and
17 opportunity for hearing, that the export trading com-
18 pany is a subsidiary of the investing banking organiza-
19 tion, it shall have authority to disapprove the invest-
20 ment or impose conditions on such investment under
21 authority of subsection (d). In furtherance of such au-
22 thority, the appropriate Federal banking agency may
23 require divestiture of any voting stock or other evi-
24 dences of ownership previously acquired, and may

1 impose conditions necessary for the termination of any
2 controlling relationship.

3 (2) NOTICE REQUIREMENT.—If a banking organi-
4 zation proposes to make any investment or engage in
5 any activity included within the following two subpara-
6 graphs, it must give the appropriate Federal banking
7 agency 60 days prior written notice before it makes
8 such investment or engages in such activity:

9 (A) any additional investment in an export
10 trading company subsidiary; or

11 (B) the engagement by any export trading
12 company subsidiary in any line of activity, includ-
13 ing specifically the taking of title to goods, wares,
14 merchandise or commodities, if such activity was
15 not disclosed in any prior application for approval.

16 During the notification period provided under this para-
17 graph, the appropriate Federal banking agency may,
18 by written notice, disapprove the proposed investment
19 or activity or impose conditions on such investment or
20 activity under authority of subsection (d). An additional
21 investment or activity covered by this paragraph may
22 be made or engaged in, as the case may be, prior to
23 the expiration of the notification period if the appropri-
24 ate Federal banking agency issues written notice of its
25 intent not to disapprove.

1 (3) FAILURE TO DISAPPROVE.—In the event of
2 the failure of the appropriate Federal banking agency
3 to act on any application for approval under paragraph
4 (1)(B) of this subsection within the 90-day period
5 which begins on the date the application has been ac-
6 cepted for processing by the appropriate Federal bank-
7 ing agency, the application shall be deemed to have
8 been granted. In the event of the failure of the appro-
9 priate Federal banking agency either to disapprove or
10 to impose conditions on any investment or activity sub-
11 ject to the prior notification requirements of paragraph
12 (2) of this subsection within the 60-day period provided
13 therein, such period beginning on the date the notifica-
14 tion has been received by the appropriate Federal
15 banking agency, such investment or activity may be
16 made or engaged in, as the case may be, any time
17 after the expiration of such period.

18 (c) LIMITATIONS.—The following limitations apply to
19 export trading companies and the investments in such compa-
20 nies by banking organizations:

21 (1) NAME.—The name of any export trading com-
22 pany shall not be similar in any respect to that of a
23 banking organization that owns any of its voting stock
24 or other evidences of ownership.

1 (2) MAXIMUM COST.—The total historical cost of
2 the direct and indirect investments by a banking orga-
3 nization in an export trading company combined with
4 extensions of credit by the banking organization and its
5 direct and indirect subsidiaries to such export trading
6 company shall not exceed 10 percent of the banking
7 organization's capital and surplus.

8 (3) DIVESTITURE FOR UNNECESSARY COMMOD-
9 ITIES INVESTMENTS.—A banking organization that
10 owns any voting stock or other evidences of ownership
11 of an export trading company shall terminate its own-
12 ership of such stock if the export trading company
13 takes positions in commodities or commodities con-
14 tracts other than as may be necessary in the course of
15 its business operations.

16 (4) EXTENSIONS OF CREDIT.—No banking orga-
17 nization holding voting stock or other evidences of
18 ownership of any export trading company may extend
19 credit or cause any affiliate to extend credit to any
20 export trading company or to customers of such com-
21 pany on terms more favorable than those afforded simi-
22 lar borrowers in similar circumstances, and such exten-
23 sion of credit shall not involve more than the normal
24 risk of repayment or present other unfavorable
25 features.

1 (d) APPLICATIONS.—

2 (1) GENERAL FACTORS.—In the case of every
3 application under subsection (b)(1)(B) of this section,
4 the appropriate Federal banking agency shall take into
5 consideration the financial and managerial resources,
6 competitive situation, and future prospects of the bank-
7 ing organization and export trading company con-
8 cerned, and the benefits of the proposal to United
9 States business, industrial and agricultural concerns,
10 and to improving United States competitiveness in
11 world markets. The appropriate Federal banking
12 agency may not approve any investment for which an
13 application has been filed under subsection (b)(1)(B) if
14 it finds that the export benefits of such proposal are
15 outweighed in the public interest by any adverse finan-
16 cial, managerial, competitive, or other banking factors
17 associated with the particular investment. Any disap-
18 proval order issued under this section must contain a
19 statement of the reasons for disapproval.

20 (2) CONDITIONS.—In approving any application
21 submitted under subsection (b)(1)(B), the appropriate
22 Federal banking agency may impose such conditions
23 which, under the circumstances of such case, it may
24 deem necessary (A) to limit a banking organization's fi-
25 nancial exposure to an export trading company, or (B)

1 to prevent possible conflicts of interest or unsafe or un-
2 sound banking practices. With respect to the taking of
3 title to goods, wares, merchandise or commodities by
4 any export trading company subsidiary of a banking or-
5 ganization, the appropriate Federal banking agencies
6 shall establish standards designed to ensure against
7 any unsafe or unsound practices that could adversely
8 affect a controlling banking organization investor, in-
9 cluding specifically practices pertaining to an export
10 trading company subsidiary's holding of title to inven-
11 tory. Such standards should be established no later
12 than 270 days after enactment of this Act, and oppor-
13 tunity should be provided for public comment and par-
14 ticipation in developing such standards. If an export
15 trading company subsidiary of a banking organization
16 proposes to take title to goods, wares, merchandise, or
17 commodities in a manner which does not conform to
18 such standards, or prior to the establishment of such
19 standards, it may only do so with the prior approval of
20 the appropriate Federal banking agency and subject to
21 such conditions and limitations as it may impose under
22 this paragraph.

23 (3) CRITERIA FOR CONDITIONS.—In determining
24 whether to impose any condition under the preceding
25 paragraph (2), or in imposing such condition, the ap-

1 appropriate Federal banking agency must give due con-
2 sideration to the size of the banking organization and
3 export trading company involved, the degree of invest-
4 ment and other support to be provided by the banking
5 organization to the export trading company, and the
6 identity, character, and financial strength of any other
7 investors in the export trading company. The appropri-
8 ate Federal banking agency shall not impose any con-
9 ditions or set standards for the taking of title which
10 unnecessarily disadvantage, restrict or limit export
11 trading companies in competing in world markets or in
12 achieving the purpose set forth in section 622(b) of this
13 Act. In particular, in setting standards for the taking
14 of title under paragraph (2), the appropriate Federal
15 banking agencies shall give special weight to the need
16 to take title in certain kinds of trade transactions, such
17 as international barter transactions.

18 (4) DIVESTITURE ORDERED BY BOARD.—Not-
19 withstanding any other provision of this part, the ap-
20 propriate Federal banking agency may, whenever it
21 has reasonable cause to believe that the ownership or
22 control of any investment in an export trading com-
23 pany constitutes a serious risk to the financial safety,
24 soundness, or stability of the banking organization and
25 is inconsistent with sound banking principles or with

1 the purposes of this part or with the Financial Institu-
2 tions Supervisory Act of 1966, order the banking orga-
3 nization, after due notice and opportunity for hearing,
4 to terminate (within 120 days or such longer period as
5 the Board may direct in unusual circumstances) its in-
6 vestment in the export trading company.

7 (5) REPORT.—On or before 2 years after enact-
8 ment of this Act, the appropriate Federal banking
9 agencies shall jointly report to the Committee on
10 Banking, Housing, and Urban Affairs of the Senate
11 and the Committee on Banking, Finance and Urban
12 Affairs of the House of Representatives their recom-
13 mendations with respect to the implementation of this
14 section, their recommendations on any changes in
15 United States law to facilitate the financing of United
16 States exports, especially by smaller and medium-sized
17 business concerns, and their recommendations on the
18 effects of ownership of United States banks by foreign
19 banking organizations affiliated with trading companies
20 doing business in the United States.

21 (e) JUDICIAL REVIEW.—Any party aggrieved by an
22 order of an appropriate Federal banking agency under this
23 section may obtain a review of such order in the United
24 States Court of Appeals within any circuit wherein such or-
25 ganization has its principal place of business, or in the Court

1 of Appeals for the District of Columbia Circuit, by filing a
2 notice of appeal in such court within 30 days from the date of
3 such order, and simultaneously sending a copy of such notice
4 by registered or certified mail to the appropriate Federal
5 banking agency. The appropriate Federal banking agency
6 shall promptly certify and file in such court the record upon
7 which the order was based. The court shall set aside any
8 order found to be—

9 (1) arbitrary, capricious, an abuse of discretion, or
10 otherwise not in accordance with law;

11 (2) contrary to constitutional right, power, privi-
12 lege, or immunity;

13 (3) in excess of statutory jurisdiction, authority, or
14 limitations, or short of statutory right; or

15 (4) without observance of procedure required by
16 law.

17 Except for violations of subsection (b)(3) of this section, the
18 court shall remand for further consideration by the appropri-
19 ate Federal banking agency any order set aside solely for
20 procedural errors and may remand for further consideration
21 by the appropriate Federal banking agency any order set
22 aside for substantive errors. Upon remand, the appropriate
23 Federal banking agency shall have no more than 60 days
24 from date of issuance of the court's order to cure any proce-
25 dural error or reconsider its prior order. If the agency fails to

1 act within this period, the application or other matter subject
2 to review shall be deemed to have been granted as a matter
3 of law.

4 (f) ADMINISTRATIVE AUTHORITY.—

5 (1) IN GENERAL.—The appropriate Federal bank-
6 ing agencies are authorized and empowered to issue
7 such rules, regulations, and orders, to require such re-
8 ports, to delegate such functions, and to conduct such
9 examinations of subsidiary export trading companies,
10 as each of them may deem necessary in order to per-
11 form their respective duties and functions under this
12 section and to administer and carry out the provisions
13 and purposes of this section and prevent evasions
14 thereof.

15 (2) ENFORCEMENT UNDER FEDERAL DEPOSIT IN-
16 SURANCE ACT.—In addition to any powers, remedies,
17 or sanctions otherwise provided by law, compliance
18 with the requirements imposed under this section may
19 be enforced under section 8 of the Federal Deposit In-
20 surance Act by any appropriate Federal banking
21 agency defined in that Act.

22 SEC. 626. INITIAL INVESTMENTS AND OPERATING EXPENSES.

23 (a) ECONOMIC DEVELOPMENT ADMINISTRATION AP-
24 PPLICATIONS.—The Economic Development Administration
25 and the Small Business Administration are directed, in their

1 consideration of applications by export trading companies for
2 loans and guarantees, including applications to make new in-
3 vestments related to the export of goods or services produced
4 in the United States and to meet operating expenses, to give
5 special weight to export-related benefits, including opening
6 new markets for United States goods and services abroad and
7 encouraging the involvement of small or medium-size busi-
8 nesses or agricultural concerns in the export market.

9 (b) **AUTHORIZATION OF APPROPRIATIONS.**—There are
10 authorized to be appropriated as necessary to meet the pur-
11 poses of this section, \$20,000,000 for each of the fiscal
12 years, 1981, 1982, 1983, 1984, and 1985. Amounts appro-
13 priated pursuant to the authority of this subsection shall be in
14 addition to amounts appropriated under the authority of other
15 Acts.

16 **SEC. 627. GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE**
17 **AND INVENTORY.**

18 The Export-Import Bank of the United States is author-
19 ized and directed to establish a program to provide guaran-
20 tees for loans extended by financial institutions or other pri-
21 vate creditors to export trading companies as defined in sec-
22 tion 623(a)(5) of this Act, or to other exporters, when such
23 loans are secured by export accounts receivable or inven-
24 tories of exportable goods, and when in the judgment of the
25 Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

PART 3—SMALL BUSINESS ACT AMENDMENTS

SEC. 631. SHORT TITLE.

This part may be cited as the “Small Business Export Expansion Act of 1980”.

SEC. 632. PURPOSES.

It is the purpose of this part to encourage and promote small business exporting by—

(1) providing educational and marketing assistance to small businesses;

(2) insuring better access to export information and assistance for small businesses by upgrading and expanding the export development programs and services of the Department of Commerce and the Small Business Administration; and

(3) promoting the competitive viability of such firms in export trade and encouraging increased tour-

1 ism in the United States by creating a program to pro-
2 vide limited financial, technical, and management as-
3 sistance as may be necessary.

4 **SEC. 633. SMALL BUSINESS EXPORT FINANCING ASSISTANCE.**

5 (a) **LOAN ADMINISTRATION.**—Section 5(b)(7) of the
6 Small Business Act is amended to read as follows:

7 “(7) in addition to any powers, functions, privi-
8 leges, and immunities otherwise vested in him, take
9 any and all actions (including the procurement of the
10 services of attorneys by contract in any office where an
11 attorney or attorneys are not or cannot be economi-
12 cally employed full time to render such services) when
13 he determines such actions are necessary or desirable
14 in making, servicing, compromising, modifying, liqui-
15 dating, or otherwise dealing with or realizing on loans
16 made under the provisions of this Act, but nothing
17 herein shall be construed as authorizing the Adminis-
18 trator to contract or otherwise delegate his
19 responsibility for loan servicing to other than Adminis-
20 tration personnel, although, with respect to deferred
21 participation loans, he may authorize participating
22 lending institutions, in his discretion, pursuant to reg-
23 ulations promulgated by him, to take such actions on
24 his behalf, including, but not limited to, the determina-

1 tion of eligibility and credit worthiness, and loan moni-
2 toring, collections, and liquidation;”.

3 (b) EXPORT FINANCING ASSISTANCE.—Section 7(a) of
4 the Small Business Act is amended by inserting “to finance
5 export assistance,” before “to finance plant construction,”.

6 (c) CREDIT FOR FOREIGN MARKET DEVELOPMENT.—
7 Section 7(a) of the Small Business Act is further amended by
8 inserting before “The foregoing powers shall be subject, how-
9 ever,” the following new sentences: “The Administration is
10 further empowered to make or effect either directly or in co-
11 operation with banks or other lending institutions through
12 agreements to participate on an immediate or deferred basis
13 extensions and revolving lines of credit for export purposes to
14 enable small business concerns to develop foreign markets
15 and for preexport financing, but no such extension or revolv-
16 ing line of credit may be made for a period or periods
17 exceeding 18 months. A bank or participating lending insti-
18 tution may establish the rate of interest on extensions and
19 revolving lines of credit as may be legal and reasonable.”.

20 (d) MAXIMUM AMOUNT OF LOAN.—Section 7(a)(4) of
21 the Small Business Act is amended by adding at the end
22 thereof the following new sentence: “In the case of any de-
23 ferred participation loan or extension or revolving line of
24 credit made under this subsection for export purposes, the
25 total amount outstanding and committed (by participation or

1 otherwise) to the borrower from the revolving fund estab-
2 lished by section 4(c)(1)(B) of this Act shall not exceed
3 \$750,000.”.

4 (e) OFFICE OF INTERNATIONAL TRADE.—The Small
5 Business Act is amended by redesignating sections 16
6 through 21 as sections 17 through 22, respectively, and by
7 inserting after section 15 the following new section:

8 “SEC. 16. (a) There is established within the Adminis-
9 tration an Office of International Trade which shall imple-
10 ment the programs pursuant to this section.

11 “(b) The office shall promote sales opportunities for
12 small business goods and services abroad. To accomplish this
13 objective the office shall—

14 “(1) provide small businesses with access to cur-
15 rent and complete export information by—

16 “(A) making available, at the Administra-
17 tion’s regional offices through cooperation with
18 the Department of Commerce, export information,
19 including, but not limited to, the worldwide infor-
20 mation and trade system and world trade data
21 reports;

22 “(B) maintaining a current list of financial
23 institutions that finance export operations;

24 “(C) maintaining a current directory of all
25 Federal, regional, State, and private sector pro-

grams that provide export information and assistance to small businesses; and

“(D) preparing and publishing such reports as it determines to be necessary concerning market conditions, sources of financing, export promotion programs, and other information pertaining to the needs of small business exporting firms so as to insure that the maximum information is made available to small businesses in a readily usable form;

“(2) encourage through cooperation with the Department of Commerce, greater small business participation in trade fairs, shows, missions, and other domestic and overseas export development activities of the Department of Commerce; and

“(3) facilitate decentralized delivery of export information and assistance to small businesses by assigning full time export development specialists to each Administration regional office. Such specialists shall—

“(A) assist small businesses in obtaining export information and assistance from other Federal departments and agencies;

“(B) maintain a current directory of all programs which provide export information and assistance to small businesses within the region;

1 “(C) encourage financial institutions to de-
2 velop and expand programs for export financing;

3 “(D) provide advice to Administration per-
4 sonnel involved in granting loans, loan guaran-
5 tees, and extensions and revolving lines of credit,
6 and providing other forms of assistance to small
7 businesses engaged in exports; and

8 “(E) within one hundred and eighty days of
9 their appointment, participate in training pro-
10 grams designed by the Administrator, in conjunc-
11 tion with the Department of Commerce and other
12 Federal departments and agencies, to study
13 export programs and to examine small businesses
14 needs for export information and assistance.”.

15 (f) EXPORT PROMOTION CENTER.—Section 5 of the
16 Small Business Act is amended by adding at the end there-
17 of the following new subsection:

18 “(f)(1) The Administrator, after consultation with the
19 Secretary of Commerce, the President of the Export-Import
20 Bank of the United States, the President of the Overseas
21 Private Investment Corporation, and the Commissioner of
22 the Internal Revenue Service, shall establish an export pro-
23 motion center in each of two regional offices of the Adminis-
24 tration where field offices of the Department of Commerce
25 and the Internal Revenue Service exist.

1 “(2) The Export-Import Bank of the United States, the
2 Internal Revenue Service, the Overseas Private Investment
3 Corporation, the Department of Commerce and the Adminis-
4 tration shall each designate at least one full-time employee to
5 serve as such agency’s full-time representative in each such
6 center. Each person designated by the Administration shall
7 be familiar with the needs and problems of small business
8 exporting and shall serve without regard to the provisions of
9 title 5, United States Code, governing appointments in the
10 competitive service, and without regard to chapter 51, and
11 subchapter III of chapter 53 of such title relating to classifi-
12 cation and General Schedule pay rates. Each export promo-
13 tion center shall serve as a one-stop information center on
14 Federal Government export assistance, financing programs
15 available to small business, and other provisions of law gov-
16 erning exporting for small business.

17 “(3) Not later than 6 months after the enactment of the
18 National Export Policy Act of 1980, the Administrator shall
19 report to the Senate Select Committee on Small Business
20 and the Committee on Small Business of the House of Repre-
21 sentatives on the progress made in implementing the provi-
22 sions of this section.

23 “(4) Within 2 years after the date of enactment of such
24 Act, the Administration shall evaluate these export promo-
25 tion centers, including, but not limited to, an analysis of the

1 effectiveness of the center in developing and expanding small
2 business exports, and a comparison of the effectiveness of the
3 center in relation to regional offices of the Administration
4 which do not have an export promotion center. Such evalua-
5 tion shall be submitted to the Senate Select Committee on
6 Small Business and the Committee on Small Business of the
7 House of Representatives.

8 “(5) This section shall be repealed effective October 1,
9 1983.”.

10 **SEC. 634. SMALL BUSINESS EXPORT EXPANSION ASSISTANCE.**

11 (a) **GRANT AUTHORITY.**—The Secretary of Commerce
12 (hereinafter referred to as the “Secretary”) is authorized to
13 make grants (including contracts and cooperative agree-
14 ments) to a qualified applicant to encourage the development
15 and implementation of a small business international market-
16 ing program (hereinafter referred to as the “program”). Each
17 qualified applicant under this title may receive a Federal
18 grant not to exceed \$150,000 annually for each of three
19 years.

20 (b) **INTERNATIONAL MARKETING PROGRAM.**—

21 (1) **ELIGIBILITY FOR GRANTS.**—To be eligible for
22 a grant under this section, an applicant proposing to
23 carry out a small business international marketing pro-
24 gram must submit to the Secretary an application dem-
25 onstrating, at a minimum:

1 (A) the geographical area to be served;

2 (B) the number of firms to be assisted;

3 (C) the staff required to administer the
4 program;

5 (D) the means to counsel small businesses in-
6 terested in pursuing export sales, including pro-
7 viding information concerning available financing,
8 credit insurance, tax treatment, potential markets
9 and marketing assistance, export pricing, ship-
10 ping, documentation, and foreign financing and
11 business customs;

12 (E) the ability to provide market analysis of
13 the export potential of small business concerns;
14 and

15 (F) the capability for developing contacts
16 with potential foreign customers and distributors
17 for small business and their products, including
18 arrangements and sponsorship of foreign trade
19 missions for small business concerns to meet with
20 identified potential customers, distributors, sales
21 representatives, and organizations interested in li-
22 censing or joint ventures, but no portion of any
23 Federal funds may be used to underwrite directly
24 any small business participation in foreign trade
25 missions abroad.

1 (2) LOCAL LEVEL SERVICES.—Program services
2 shall be provided to small business concerns through
3 outreach services at the most local level practicable.

4 (3) STAFF DIRECTORS.—Each small business in-
5 ternational marketing program shall have a full-time
6 staff director to manage program activities, and access
7 to export specialists to counsel and to assist small busi-
8 ness clients in international marketing.

9 (c) ADVISORY BOARDS.—

10 (1) IN GENERAL.—Each small business interna-
11 tional marketing program shall establish an advisory
12 board of nine members to be appointed by the staff direc-
13 tor of the program, not less than five members of whom
14 shall be small business persons or representatives of
15 small business associations.

16 (2) FUNCTION.—Each advisory board shall elect a
17 chairman and shall advise, counsel, and confer with the
18 staff director of the program on all policy matters per-
19 taining to the operation of the program (including who
20 may be eligible to receive assistance, ways to promote
21 the sale of United States products and services in for-
22 eign markets or to encourage tourism in the United
23 States, and how to maximize local and regional private
24 consultant participation in the program).

1 (d) NONGOVERNMENTAL SOURCED FINANCING.—The
2 Secretary shall require, as a condition to any grant (or
3 amendment or modification thereof) made to an applicant
4 under this section, that an additional amount (excluding any
5 fees collected from recipients of such assistance) equal to
6 twice the amount of such grant be provided from sources
7 other than the Federal Government. The additional amount
8 shall not include any amount of indirect costs or in-kind con-
9 tributions paid for under any Federal program, nor shall indi-
10 rect costs or in-kind contributions exceed 50 percent of the
11 non-Federal additional amount.

12 (e) EVALUATION PLAN.—The Secretary shall develop a
13 plan to evaluate programs approved under this section which
14 shall only—

15 (1) determine the impact of small business inter-
16 national marketing programs on those small businesses
17 assisted;

18 (2) determine the amount of export sales gener-
19 ated by small businesses assisted through such pro-
20 grams; and

21 (3) make recommendations concerning continu-
22 ation or expansion of the program and possible im-
23 provements in the program structure.

24 Such evaluation shall be submitted to the Congress by Octo-
25 ber 1, 1982.

1 (f) INFORMATION.—For the purpose of the evaluation
2 under subsection (e), the Secretary is authorized to require
3 any small business international marketing program, or party
4 receiving assistance under this section, to furnish such infor-
5 mation as is deemed appropriate to complete the required
6 evaluation.

7 (g) APPLICANT DEFINED.—As used in this section, the
8 term “applicant” means any State government or agency or
9 instrumentality thereof, Small Business Administration-des-
10 ignated small business development center, for-profit small
11 business, or any combination of such entities, which will
12 carry out a small business international marketing program.

13 **SEC. 635. LOCATION; AUTHORIZATION OF APPROPRIATIONS.**

14 (a) LOCATIONS.—At least one small business interna-
15 tional program shall be established within each region of the
16 Department of Commerce.

17 (b) AUTHORIZATION OF APPROPRIATIONS.—There are
18 authorized to be appropriated to the Secretary \$1,500,000
19 for each fiscal year 1981, 1982, and 1983, to carry out the
20 program established under section 634(a).

21 **SEC. 646. CLEARINGHOUSE FUNCTION.**

22 The Secretary, through the International Trade Admin-
23 istration, shall maintain a central clearinghouse to provide for
24 the collection, dissemination, and exchange of information
25 between programs established pursuant to this part, sections

1 5(f) and 16 of the Small Business Act, and other related
2 programs.

3 **PART 4—JOINT EXPORT MARKETING ASSISTANCE**

4 **SEC. 641. ESTABLISHMENT OF PROGRAM.**

5 (a) **IN GENERAL.**—The Secretary of Commerce (herein-
6 after referred to as the “Secretary”) shall establish a pro-
7 gram in accordance with the provisions of this part to pro-
8 mote export marketing activities for domestic industry.

9 (b) **COOPERATIVE AGREEMENTS.**—The Secretary may
10 enter into cooperative agreements with industrial corpora-
11 tions or groups of noncompeting corporations with limited ex-
12 perience in exporting to develop foreign markets for their
13 products which would require a minimum two-year effort
14 upon the approval of a proposal from such corporation or
15 group of corporations in accordance with section 642.

16 (c) **RESEARCH.**—Upon entering an agreement pursuant
17 to subsection (b) the Secretary shall direct specific market
18 research for the products involved in foreign markets—

19 (1) to measure the opportunity for particular ele-
20 ments of the product field;

21 (2) to determine advantageous methods of pursu-
22 ing opportunities; and

23 (3) to indicate the potential term of activity and
24 the prospects for success.

1 SEC. 642. MARKETING PROPOSALS.

2 (a) SUBMISSION OF PROPOSAL.—On the basis of the
3 research under section 651, interested industrial corporations
4 or groups of noncompeting corporations may prepare and
5 submit a proposal incorporating specific marketing actions, a
6 timetable for such actions and such other relevant informa-
7 tion as the Secretary may require to the Secretary for
8 approval.

9 (b) REVIEW OF SUBMISSIONS.—Proposals submitted
10 under subsection (a) shall be reviewed by the Secretary and
11 the Small Business Administration and any Federal agency
12 involved in the product to be marketed.

13 SEC. 643. FINANCIAL AGREEMENT.

14 (a) MARKETING AGREEMENTS.—The Secretary of
15 Commerce, after approving a proposal submitted under sec-
16 tion 642, may enter into an agreement with the entity which
17 submitted such proposal to share the cost of such marketing
18 for a period not to exceed three years.

19 (b) MAXIMUM FEDERAL SHARE.—The Federal share
20 of participation in such agreement shall not exceed 50 per
21 centum of the reasonable costs of such program.

22 (c) REPAYMENT REQUIREMENT.—Any agreement en-
23 tered into under this section shall require that the entity en-
24 tering into the agreement shall repay the Federal share over
25 a five-year period beginning at the expiration of the Federal
26 participation.

1 SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

2 There are authorized to be appropriated to carry out the
3 provisions of this part such sums as may be necessary.

4 PART 5—INTERNATIONAL EDUCATION PROGRAMS

5 SEC. 651. SHORT TITLE.

6 This part may be cited as the “International Education
7 Programs Act”.

8 SEC. 652. HIGHER EDUCATION ACT AMENDMENTS.

9 Title VI of the Higher Education Act is amended to
10 read as follows:

11 “TITLE VI—INTERNATIONAL EDUCATION
12 PROGRAMS

13 “PART A—BUSINESS AND INTERNATIONAL EDUCATION
14 PROGRAMS

15 “FINDINGS AND PURPOSES

16 “SEC. 601. (a) The Congress finds that—

17 “(1) the future economic welfare of the United
18 States will depend substantially on increasing interna-
19 tional skills in the business community and creating an
20 awareness among the American public of the
21 internationalization of our economy;

22 “(2) concerted efforts are necessary to engage
23 business schools, language and area study programs,
24 public and private sector organizations, and United
25 States business in a mutually productive relationship
26 which benefits the Nation’s future economic interests;

1 “(3) few linkages presently exist between the
2 manpower and information needs of United States busi-
3 ness and the international education, language training,
4 and research capacities of institutions of higher educa-
5 tion in the United States, and public and private orga-
6 nizations; and

7 “(4) organizations such as world trade councils,
8 world trade clubs, chambers of commerce, and State
9 departments of commerce are not adequately used to
10 link universities and business for joint venture explora-
11 tion and program development.

12 “(b) It is the purpose of this part—

13 “(1) to enhance the broad objective of this Act by
14 increasing and promoting the Nation’s capacity for in-
15 ternational understanding and economic enterprise
16 through the provision of suitable international educa-
17 tion and training for business personnel in various
18 stages of professional development; and

19 “(2) to promote institutional and noninstitutional
20 educational and training activities that will contribute
21 to the ability of United States business to prosper in an
22 international economy.

23 “EDUCATION AND TRAINING PROGRAMS

24 “SEC. 602. (a) The Secretary shall make grants to, and
25 enter into contracts with, institutions of higher education to

1 pay the Federal share of the cost of programs designed to
2 promote linkages between such institutions and the American
3 business community engaged in international economic activ-
4 ity. Each program assisted under this part shall both enhance
5 the international academic programs of institutions of higher
6 education and provide appropriate services to the business
7 community which will expand its capacity to engage in com-
8 merce abroad.

9 “(b) Eligible activities to be conducted by institutions of
10 higher education under this section shall include, but are not
11 limited to—

12 “(1) innovation and improvement in international
13 education curricula to serve the needs of the business
14 community, including development of new programs for
15 nontraditional, mid-career, or part-time students;

16 “(2) development of programs to inform the public
17 of increasing international economic interdependence
18 and the role of American business within the interna-
19 tional economic system;

20 “(3) internationalization of curriculums at the
21 junior and community college level, and at undergrad-
22 uate and graduate schools of business;

23 “(4) development of area studies programs and in-
24 terdisciplinary international programs;

1 “(5) establishment of export education programs
2 through cooperative arrangements with regional and
3 world trade centers and councils, and with bilateral
4 and multilateral trade associations;

5 “(6) research for and development of specialized
6 teaching materials, including language materials, and
7 facilities appropriate to business-oriented students;

8 “(7) establishment of student and faculty fellow-
9 ships and internships for training and education in in-
10 ternational business activities;

11 “(8) development of opportunities for junior busi-
12 ness and other professional school faculty to acquire or
13 strengthen international skills and perspectives; and

14 “(9) development of research programs on issues
15 of common interest to institutions of higher education
16 and private sector organizations and associations en-
17 gaged in or promoting international economic activity.

18 “(c) No grant may be made and no contract may be
19 entered into under the provisions of this part unless an insti-
20 tution of higher education submits an application at such time
21 and in such manner as the Secretary may reasonably require.
22 Each such application shall be accompanied by a copy of the
23 agreement entered into by the institution of higher education
24 with a business enterprise, trade organization, or association
25 engaged in international economic activity, or a combination

1 or consortium of such enterprises, organizations, or associ-
2 ations, for the purpose of establishing, developing, improving,
3 or expanding activities eligible for assistance under subsec-
4 tion (b) of this section. Each such application shall contain
5 assurances that the institution of higher education will use
6 the assistance provided under this part to supplement and not
7 to supplant activities conducted by institutions of higher edu-
8 cation described in subsection (b).

9 “(d) The Federal share under this part for each fiscal
10 year shall not exceed 50 percent of the cost of such program.

11 “ADVISORY BOARD

12 “SEC. 603. (a) Not less than three times each year the
13 Secretary shall convene meetings of an advisory board on the
14 conduct of programs under section 602 of this title. The
15 board shall consist of—

16 “(1) one member selected by the Secretary of
17 State;

18 “(2) one member selected by the Secretary of
19 Defense;

20 “(3) one member selected by the Secretary of the
21 Treasury;

22 “(4) one member selected by the Secretary of
23 Commerce;

1 “(5) one member selected by the Secretary to
2 serve as Chairman and coordinator of the activities of
3 the board;

4 “(6) one member selected by the Chairman of the
5 National Endowment for the Humanities;

6 “(7) one member selected by the Director of the
7 International Development Cooperation Agency;

8 “(8) one member selected by the Director of the
9 International Communication Agency;

10 “(9) one member selected by the President and
11 Chairman of the Export-Import Bank of the United
12 States;

13 “(10) one member selected by the Administrator,
14 Small Business Administration;

15 “(11) five members selected by the Secretary
16 from among representatives of the postsecondary edu-
17 cational community;

18 “(12) two members selected by the Secretary
19 from among representatives of the elementary and sec-
20 ondary education community;

21 “(13) three members selected by the Secretary
22 from among members of the public; and

23 “(14) three members selected by the Secretary
24 from among representatives of the business community.

1 “(b)(1) The advisory board shall establish two subcom-
2 mittees to carry out the functions described in paragraphs (2)
3 and (3) of this subsection.

4 “(2) The advisory board established under subsection (a)
5 shall consider the grants made, or contracts entered into,
6 under this part. The board shall advise the Secretary on (A)
7 any geographic areas of special need or concern to the United
8 States, (B) innovative approaches which may help to fulfill
9 the purposes of this title, (C) activities which are duplicative
10 of programs operated under other provisions of Federal law,
11 (D) changes which should be made in the operation of pro-
12 grams under this part to ensure that the attention of scholars
13 is attracted to problems of critical concern to United States
14 international relations, and (E) the administrative and staff-
15 ing requirements of international education programs in the
16 Department.

17 “(3) The advisory board established under subsection (a)
18 shall review the programs under section 612 and shall advise
19 the Secretary, who shall seek the advice of the Secretary of
20 Commerce, on (A) changes which should be made to advance
21 the purposes of this part and to assure the success of the
22 programs authorized by this part, (B) special needs of such
23 programs, and (C) any program elements which are dupli-
24 cative of programs operated under other provisions of Federal
25 law.

1 “AUTHORIZATION OF APPROPRIATIONS

2 “SEC. 604. There are authorized to be appropriated to
3 the Secretary of Education \$7,500,000 for fiscal year 1981
4 and for each of the succeeding fiscal years ending prior to
5 October 1, 1985, to carry out the provisions of this part.

6 “PART B—GENERAL PROVISIONS

7 “DEFINITIONS

8 “SEC. 611. (a) As used in this title—

9 “(1) the term ‘area studies’ means a program of
10 comprehensive study of the aspects of a society or soci-
11 eties, including study of its history, culture, economy,
12 politics, international relations, and languages;

13 “(2) the term ‘international business’ means
14 profit-oriented business relationships conducted across
15 national boundaries and includes activities such as the
16 buying and selling of goods; investments in industries;
17 the licensing of processes, patents, and trademarks;
18 and the supply of services;

19 “(3) the term ‘export education’ means educating,
20 teaching and training to provide general knowledge
21 and specific skills pertinent to the selling of goods and
22 services to other countries, including knowledge of
23 market conditions, financial arrangements, laws and
24 procedures; and

1 “(4) the term ‘internationalization of curricula’
2 means the incorporation of international or comparative
3 perspectives in existing courses of study or to add new
4 components to the curricula to provide an international
5 context for American business education.

6 “(b) All references to individuals or organizations,
7 unless the context otherwise requires, mean individuals who
8 are citizens of the United States or organizations which are
9 organized or incorporated in the United States.”.

10 **PART 6—EXPORT OF SERVICES**

11 **SEC. 661. EXPORT OF SERVICES.**

12 (a) **IN GENERAL.**—Within 6 months after the enact-
13 ment of this Act, each United States Government agency and
14 the representatives of the United States Government to any
15 international organization shall (1) identify and analyze all
16 programs which could significantly affect the export or use of
17 United States firms’ services; (2) make available to United
18 States firms which are engaged or interested in the export of
19 services from the United States such information and main-
20 tain current information about such programs; (3) establish
21 within the agency, or, in the case of international organiza-
22 tions, make the United States representatives responsible for,
23 programs to publicize export-related programs for services
24 and establish a liaison to the private sector to receive com-
25 ments regarding the development and administration of such

1 programs; and (4) undertake to modify, where feasible and
2 consistent with the laws of the United States, those programs
3 which have been determined to have a negative effect or
4 whose administration or design have an adverse effect on the
5 export of services of the United States.

6 (b) SECRETARY OF COMMERCE.—The Secretary of
7 Commerce and the Department of Commerce shall have lead
8 responsibility within the United States Government for co-
9 ordinating the programs authorized by this section and for
10 any other service-sector export promotion program except as
11 otherwise specified by law.

12 (c) DISC STUDY.—The Department of the Treasury
13 shall study and report to the Congress within 6 months after
14 the enactment of this Act the feasibility of extending DISC
15 treatment to the export of services and the reasons why serv-
16 ice industries should not receive tax treatment equivalent to
17 the manufacturing sector.

18 TITLE VII—AGRICULTURAL EXPORTS

19 SEC. 701. STATEMENT OF FINDINGS AND CONCLUSIONS.

20 (a) FINDINGS.—The Congress finds that—

21 (1) agricultural exports are vital to current and
22 future United States trade health;

23 (2) agricultural exports have been a major positive
24 factor in the United States balance of trade, exceeding
25 the value of agricultural imports for nearly 20 years; in

1 1979 agricultural exports provided a surplus of
2 \$16,000,000,000 and will provide an estimated
3 \$20,000,000,000 surplus in 1980;

4 (3) a large volume of agricultural exports is essen-
5 tial to United States agriculture—

6 (A) exports are now responsible for 15 per-
7 cent of the jobs in farming and 20 percent of
8 gross farm sales;

9 (B) production from one-third of the harvest-
10 ed acres in the United States is exported; and

11 (C) growers of rice, cotton, citrus fruits and
12 tobacco are particularly dependent on foreign
13 markets for their livelihood;

14 (4) in 1979 the \$32,000,000,000 of agricultural
15 exports provided employment for about 1,600,000
16 workers and generated \$63,000,000,000 of total eco-
17 nomic activity;

18 (5) the percentage share of total exports ac-
19 counted for by agricultural exports is high, 19 percent,
20 but there are signs that growth of the agricultural
21 product share is slowing; and

22 (6) as much as two-thirds of United States agri-
23 cultural exports are subject to some trade restriction
24 abroad.

25 (b) CONCLUSIONS.—The Congress concludes that—

1 (1) it is critical to our export efforts and to our
2 economic strength in general to insure that United
3 States agriculture can continue to maintain or improve
4 its position in world trade;

5 (2) the executive branch must continue its efforts
6 to implement the Multilateral Trade Agreement of
7 1979 and to urge further removal of tariff and nontariff
8 barriers abroad on United States agricultural products;

9 (3) adequate funds must be made available so that
10 the Department of Agriculture can continue to carry
11 out and expand its successful foreign market develop-
12 ment programs, particularly in Western Europe and
13 Japan, but also in new market areas of Southeast
14 Asia, the Middle East, Africa, Eastern Europe and
15 China;

16 (4) the Agricultural Trade Act of 1978 should be
17 fully and aggressively implemented, particularly with
18 regard to our overseas marketing activities;

19 (5) United States agricultural representatives
20 overseas should hold the same rank and importance as
21 our other commercial and economic representatives
22 making clear the significance the United States
23 attaches to agricultural exports;

24 (6) the United States Government should pursue
25 policies that guarantee a dependable supply of food and

1 fiber at reasonable prices, and should only resort to
 2 embargoes on export of agricultural products when our
 3 foreign policy objectives can be achieved in no other
 4 way;

5 (7) adequate and competitive financing for agricul-
 6 tural exports must be made available through the Com-
 7 modity Credit Corporation credit program and the
 8 United States Export-Import Bank as required;

9 (8) efforts must be made to insure adequate avail-
 10 ability of grain supplies, protection against wide price
 11 fluctuations and fair prices for United States grain
 12 farmers; and

13 (9) farm cooperatives must be encouraged to
 14 expand their export activities by permitting them a
 15 more direct role in export financing arrangements and
 16 developing joint marketing ventures.

17 **PART 1—COMMODITY CREDIT CORPORATION**

18 **FINANCING FOR CERTAIN SALES**

19 **SEC. 711. FINANCING FOR SHORT-TERM EXPORT CREDIT** 20 **SALES OF AGRICULTURAL COMMODITIES.**

21 The Commodity Credit Corporation Charter Act (15
 22 U.S.C. 714-714p) is amended by adding at the end thereof
 23 the following new section:

24 "SEC. 20. AGRICULTURAL EXPORT CREDIT REVOLV-
 25 ING FUND.—(a) There is established in the Treasury a re-

1 volving fund to be known as the Agricultural Export Credit
2 Revolving Fund, which shall be available without fiscal year
3 limitation, for (1) use in carrying out the provisions of section
4 5(f) of this Act, and (2) making loans for the construction or
5 acquisition of facilities in foreign countries to improve the
6 capacity of such countries for handling, marketing, process-
7 ing, storing, or distributing agricultural commodities pro-
8 duced in and exported from the United States.

9 “(b) All sums received by the Corporation from the liq-
10 uidation of loans made to carry out the purposes described in
11 section 5(f) shall be added to and become a part of such fund
12 together with funds appropriated to such fund.

13 “(c) There is authorized to be appropriated to the Agri-
14 cultural Export Credit Revolving Fund the sum of
15 \$2,000,000,000 during each of the fiscal years beginning
16 October 1, 1980, October 1, 1981, and October 1, 1982.

17 “(d) The Secretary shall submit an annual report to the
18 Congress not later than December 1 of each year with re-
19 spect to the export credit sales program carried out by the
20 Corporation in the last fiscal year. Such report shall include
21 the names of the countries extended credit under such pro-
22 gram, the total amount of such credit in the case of each such
23 country in such fiscal year, and a discussion and evaluation of
24 the marketing development activities of the Corporation
25 under this Act during such fiscal year. The first such report

1 shall be submitted to the Congress not later than Decem-
2 ber 1, 1980.

3 “(e) The revolving fund created by this section is abol-
4 ished effective October 1, 1983, and all unobligated money in
5 such fund on September 30, 1979, shall be transferred to and
6 become a part of the miscellaneous receipts account of the
7 Treasury.”.

8 **PART 2—EXPORT-IMPORT BANK CREDITS**

9 **SEC. 721. EXPORT-IMPORT BANK CREDITS FOR AGRICUL-** 10 **TURAL COMMODITIES.**

11 Section 2 of the Export-Import Bank Act of 1945 is
12 amended by adding at the end thereof the following:

13 “(d)(1) Subject to paragraph (2), for each fiscal year be-
14 ginning after September 30, 1980, the ratio that the amount
15 of credit which the Bank extends and in which it participates
16 to finance the export of agricultural commodities bears to the
17 total amount of credit which the Bank extends or in which it
18 participates shall not be less than the ratio that the dollar
19 value of exports of agricultural commodities during the imme-
20 diately preceding fiscal year bears to the dollar value of all
21 exports during such preceding fiscal year, except that if a
22 significant dollar amount of any agricultural or nonagricul-
23 tural item was embargoed in any such year, the immediately
24 preceding fiscal year in which no such embargo occurred
25 shall be used for purposes of this paragraph.

1 “(2) Paragraph (1) does not apply to any fiscal year
2 with respect to which—

3 “(A) the Bank determines and reports to the Con-
4 gress that the demand for credit to finance exports of
5 agricultural commodities is insufficient to equal or
6 exceed the ratio which would be required; or

7 “(B) the Secretary of Agriculture determines that
8 the level of exports of agricultural commodities is or
9 will be adequate without credit which the Bank ex-
10 tends or in which it participates.”.

11 **PART 3—INTERNATIONAL WHEAT EXPORTING**
12 **COMMISSION**

13 **SEC. 731. FINDINGS.**

14 The Congress finds that—

15 (1) in order to insure an adequate supply of wheat
16 for the world market each marketing year,

17 (2) in order to protect purchasers of wheat against
18 wide fluctuations in the price of wheat during any mar-
19 keting year, and

20 (3) in order to assist wheat producers in the
21 United States and throughout the world to obtain a fair
22 and reasonable price on the quantity of wheat produced
23 by them for export,

24 an international body composed of members from countries
25 that export substantial quantities of wheat each year should

1 be established to carry out the purposes described in section
2 732.

3 **SEC. 732. ESTABLISHMENT OF COMMISSION.**

4 The President is requested to take such action as may
5 be necessary to lead to the establishment of an International
6 Wheat Exporting Commission whose purpose would be to set
7 a minimum world market price each year for wheat exported
8 from member nations, prescribe the share of wheat, based
9 upon historic relationships, that may be exported from
10 member countries each year, and to initiate and carry out
11 such other actions as may be necessary to insure an adequate
12 supply of wheat for the world market each year, to protect
13 purchasers of wheat against wide fluctuations in the price of
14 wheat during any marketing year, and assist producers of
15 wheat throughout the world to recover at least costs of pro-
16 duction for the quantity of wheat produced by them for
17 export.

18 **SEC. 733. PROGRAM.**

19 The President is further requested to urge any such In-
20 ternational Commission which may be established to adopt a
21 program which would incorporate the following measures:

22 (1) The issuance by such Commission each year of
23 export licenses to the member nations prescribing the
24 total quantity of wheat each member nation may
25 export in such year.

1 (2) A prohibition against the export by any
2 member nation of any quantity of wheat in excess of
3 the quantity provided for in the export license issued to
4 such nation for such year.

5 (3) The quantity of wheat for which an export li-
6 cense would be issued in any year in the case of any
7 member nation would be based upon the historical
8 wheat export market share of such nation during a
9 base period and upon other relevant factors prescribed
10 by such Commission.

11 (4) A minimum market price at which wheat ex-
12 ported from member nations would be sold each year,
13 determined by such Commission.

14 (5) In determining whether the minimum price re-
15 ferred to in clause (4) is being met in the case of any
16 member nation in any year, there would be taken into
17 consideration any transportation or freight subsidy paid
18 by such nation on the wheat exported from such nation
19 in such year.

20 (6) A minimum market price at or above which no
21 export license for wheat would be required.

22 (7) An adjustment each year in the minimum sale
23 price referred to in clause (4) and the minimum price
24 referred to in clause (6) each year to take into account
25 inflation.

1 (8) Procedures for including new wheat exporting
2 nations in the membership of such Commission each
3 year with a prescribed maximum by which the mem-
4 bership could be expanded in any year.

5 (9) Provision for the imposition of a reasonable fee
6 for each export license issued by such Commission to
7 cover the expenses of the Commission.

8 **SEC. 734. PARTICIPATION BY UNITED STATES.**

9 The President may provide for participation by the
10 United States in any International Wheat Exporting Com-
11 mission described in section 732 of this part for a period of
12 three years.

13 **SEC. 735. PRESIDENTIAL REPORTS TO CONGRESS.**

14 (a) **PROGRESS REPORTS.**—The President shall keep the
15 Congress currently informed of the actions taken by him in
16 carrying out the provisions of this part and the progress
17 being made in achieving the establishment of an International
18 Wheat Exporting Commission for wheat described in section
19 732.

20 (b) **ANNUAL REPORT.**—Following the establishment of
21 such a Commission, the President shall submit a written
22 report to the Congress at the end of each year describing the
23 operations of such Commission and the President's assess-
24 ment of such operations.

1 TITLE VIII—INTERNATIONAL AGREEMENTS

2 SEC. 801. FINDINGS AND CONCLUSIONS.

3 (a) FINDINGS.—The Congress finds that—

4 (1) there is a high degree of interdependence
5 among world economies today which makes it neces-
6 sary to consider the international effects of national
7 economic policies and actions,8 (2) multilateral negotiations and agreements are
9 preferable to unilateral action as a solution to many
10 United States trade problems,11 (3) United States international economic policy
12 has been treated as a tool of national security and for-
13 eign policy objectives rather than a major objective in
14 its own right and has consequently not been in the best
15 interests of United States economic growth,16 (4) multinational trade agreements and codes
17 reached so far have not achieved adequate removal of
18 artificial barriers to United States products abroad, and19 (5) the international negotiating strength of the
20 United States has been hindered by its deteriorating in-
21 ternational trade balance.

22 (b) CONCLUSIONS.—The Congress concludes that—

23 (1) international economic policy, particularly
24 trade policy, must be given highest priority among
25 United States national objectives,

(2) the United States must change the focus of its international economic policies from helping other countries achieve economic growth to helping ourselves develop a stronger economy through increased exports,

(3) the time has come to stop thinking only of the world responsibilities of the United States and start demanding its rights as an international trader through international negotiations and agreements,

(4) trade should no longer be viewed as the only foreign policy weapon of the United States to the detriment of exports, and

(5) the United States must continue to seek solutions to its international trade problems through negotiations on such key areas as tariffs, nontariff barriers, financing codes, foreign business practices, antitrust applications, and international treatment of services.

SEC. 802. MULTILATERAL TRADE AGREEMENT OF 1979 AND FOLLOWUP.

(a) IN GENERAL.—It is the sense of Congress that—

(1) the agreements on tariff provisions and codes on nontariff barriers reached in the multilateral trade agreement of 1979 be strongly implemented and immediate action taken against violating nations, and

(2) the 1979 Multilateral Trade Agreement, though an important step forward, did not achieve ade-

1 quate removal of foreign tariff and nontariff barriers to
2 United States products and services and the executive
3 branch must continue its efforts to secure a freer world
4 trading environment through multilateral negotiations.

5 (b) STANDBY PROGRAM FOR AGRICULTURAL COM-
6 MODITIES.—

7 (1) IN GENERAL.—In order to encourage the im-
8 plementation of international agreements concerning
9 agricultural commodities, the Secretary of Agriculture
10 is authorized and directed to formulate a special export
11 subsidy program for agricultural commodities. Such
12 program shall be designed to neutralize the effects of
13 export subsidy programs instituted by foreign countries
14 or instrumentalities to encourage exports of their agri-
15 cultural commodities to foreign markets other than the
16 United States.

17 (2) IMPLEMENTATION AFTER PRESIDENTIAL DE-
18 TERMINATION.—The Secretary shall implement the
19 special export subsidy program formulated under sub-
20 section (a) of this section only when the President—

21 (A) makes a determination under section 301
22 of the Trade Act of 1974 (19 U.S.C. 2411) that
23 action by the United States is appropriate to
24 obtain the elimination of an act, policy, or prac-

1 tice of a foreign country or instrumentality that
2 results in—

3 (i) substantial displacement of United
4 States exports of agricultural commodities to
5 foreign markets, or

6 (ii) prices for such commodities materi-
7 ally below prices of other suppliers of the
8 same commodity to the same market, and

9 (B) determines that such act, policy, or prac-
10 tice of the foreign country or instrumentality con-
11 cerned involves the use of an export subsidy pro-
12 gram to encourage exports of agricultural com-
13 modities to foreign markets other than the United
14 States.

15 (3) ROLE OF COMMODITY CREDIT CORPORA-
16 TION.—In carrying out the special subsidy program
17 pursuant to the provisions of subsections (a) and (b) of
18 this section, the Secretary of Agriculture is authorized
19 to utilize the funds and facilities of the Commodity
20 Credit Corporation.

21 (4) AGRICULTURAL COMMODITY DEFINED.—For
22 purposes of this section, the term “agricultural com-
23 modity” means any agricultural commodity produced in
24 the United States.

1 SEC. 803. INTERNATIONAL FINANCING CODE.

2 (a) NEGOTIATIONS.—It is the sense of the Congress
3 that the President should enter into negotiations with other
4 countries for the purpose of obtaining an international agree-
5 ment under which United States exporters and foreign ex-
6 porters will be placed in substantially equal competitive posi-
7 tions with respect to official export financing.

8 (b) REPORT.—The President shall transmit to the Con-
9 gress a report not later than January 1, 1981, concerning
10 steps taken toward the negotiation of such an international
11 export finance agreement.

12 SEC. 804. INTERNATIONAL CODE OF BUSINESS CONDUCT.

13 (a) FINDINGS.—The Congress finds that—

14 (1) American companies competing in domestic
15 and foreign markets are increasingly losing sales and
16 market shares to their foreign competitors;

17 (2) this deterioration in the international market-
18 ing position of American business jeopardizes the eco-
19 nomic health of the United States, threatens to in-
20 crease unemployment, and has aggravated inflationary
21 pressures by diminishing the international value of the
22 dollar;

23 (3) one of the significant factors causing deteriora-
24 tion in this international marketing position is the fact
25 that United States businessmen are prohibited by the
26 Foreign Corrupt Practices Act from engaging in

1 certain practices that are pursued by our trading
2 competitors;

3 (4) it is in the best interests of all industrial coun-
4 tries to maintain responsible standards of corporate
5 conduct in foreign markets; and

6 (5) the Congressional Joint Economic Committee
7 unanimously recommended in its 1980 Annual Report
8 that the answer to this problem is not a relaxation of
9 standards of American business in foreign and domestic
10 trade, but an insistence upon the elimination of corrupt
11 practices by foreign nationals and, consequently, that
12 the President should initiate an effort to encourage ad-
13 herence to the principles contained in the Foreign Cor-
14 rupt Practices Act by our competitors and customers
15 abroad, utilizing international forums and other appro-
16 priate multilateral channels.

17 (b) CONCLUSIONS.—It is the sense of the Congress
18 that—

19 (1) the President shall utilize appropriate interna-
20 tional fora to urge the development and adoption of an
21 International Code of Business Conduct,

22 (2) the President should pursue the negotiation of
23 bilateral and multilateral agreements among the largest
24 possible number of industrialized and developing coun-
25 tries which would establish standards of ethical and

1 equitable conduct of international business and which
2 would establish the mechanisms to resolve the diplo-
3 matic, commercial, and legal problems associated with
4 such practices, and

5 (3) on January 2, 1981, the President shall report
6 back to the Congress as to the progress on these nego-
7 tiations.

8 (c) JOINT ECONOMIC COMMITTEE RECOMMENDA-
9 TIONS.—Within 60 days of receipt of the President's report,
10 the Joint Economic Committee shall report to the Congress
11 its recommendations as to how best to proceed with negotia-
12 tions toward an international code of business conduct or how
13 otherwise to rectify the current competitive imbalance which
14 adversely affects United States exports of goods and services.

15 SEC. 805. INTERNATIONAL CODE ON RECIPROCITY ON EN-
16 **FORCEMENT OF ANTITRUST.**

17 It is the sense of the Congress that—

18 (1) the executive branch seek an international
19 agreement that achieves multinational harmonization of
20 antitrust laws for the purpose of overriding the imposi-
21 tion of conflicting judicial and regulatory requirements
22 on the separate components of multinational enterprise,

23 (2) all nations be urged to adopt uniform antitrust
24 policies, and

1 (3) that a permanent international body open to
2 all countries under the aegis of the OECD be estab-
3 lished to resolve jurisdictional conflicts in antitrust
4 matters.

5 **SEC. 806. MULTILATERAL CODE ON FAIR TRADE IN SERVICES.**

6 It is the sense of Congress that the United States should
7 undertake to obtain a multilateral code for the treatment of
8 international trade in services, including investment. Further-
9 more, it is the sense of Congress that until such an interna-
10 tional code is agreed to the principles of fairness and equity
11 should apply to such trade in services, including reciprocity
12 of treatment and mutual, equivalent benefits.

13 **TITLE IX—GOVERNMENT SUPPORT OF EXPORT**
14 **GOALS**

15 **PART 1—FINDINGS AND CONCLUSIONS**

16 **SEC. 901. STATEMENT OF FINDINGS AND CONCLUSIONS.**

17 (a) **FINDINGS.**—The Congress finds that—

18 (1) many United States Government organizations
19 not directly associated with international trade activi-
20 ties and policies, have an impact on United States
21 exports,

22 (2) those organizations are not sufficiently aware
23 of the importance of exports to United States national
24 goals, and, therefore, are not making decisions and
25 taking actions that will assist our export efforts, and

1 (3) other successful trading nations have placed
2 high priority on export expansion and can rely on
3 consistent support for that goal from all arms of
4 government.

5 (b) CONCLUSIONS.—The Congress concludes that—

6 (1) to achieve our goal of export expansion, all of
7 the available resources of the United States Govern-
8 ment must be used to assist and promote the export of
9 United States goods and services except where con-
10 trary to the national security or national economic
11 interests, and

12 (2) in addition to the United States Trade Repre-
13 sentative; the United States Department of Com-
14 merce's International Trade Administration, the
15 Department of Agriculture's Foreign Agricultural
16 Service, and the Department of State, which have spe-
17 cific export promotion functions, all other departments,
18 agencies, and organizations (including, but not limited
19 to, the Office of Management and Budget, the Justice
20 Department, the Overseas Private Investment Corpo-
21 ration, the International Development and Cooperation
22 Agency, the Department of Education, the Department
23 of Energy, the Small Business Administration, the
24 Treasury Department, and the Congress) will consider
25 the impact on exports of their policies, decisions, and

1 programs and where possible and appropriate, take
2 positive steps to help export expansion goals.

3 **PART 2—OVERSEAS PRIVATE INVESTMENT**

4 **CORPORATION AMENDMENTS**

5 **SEC. 921. SHORT TITLE.**

6 This part may be cited as the “Overseas Private Invest-
7 ment Corporation Act of 1980”.

8 **Subpart A—Overseas Private Investment Corporation**

9 **SEC. 925. PURPOSE AND POLICY.**

10 (a) **ESTABLISHMENT AS INDEPENDENT AGENCY.**—The
11 Overseas Private Investment Corporation (the “Corpora-
12 tion”) created by the Foreign Assistance Act of 1969 is
13 hereby established as an independent agency of the United
14 States of America. The Corporation shall serve the national
15 interest by mobilizing and facilitating the participation of
16 United States private capital and skills in less developed
17 friendly countries and areas in order to increase United
18 States trade with, and contribute to the economic and social
19 development of, such countries and areas.

20 (b) **FUNCTIONS.**—In carrying out its purpose, the Cor-
21 poration, utilizing broad criteria, shall undertake—

22 (1) to conduct financing, insurance, and reinsur-
23 ance operations on a self-sustaining basis, taking into
24 account in its financing operations the economic and
25 financial soundness of projects;

1 (2) to utilize private credit and investment institu-
2 tions and the Corporation's guaranty authority as the
3 principal means of mobilizing capital investment funds;

4 (3) to broaden private participation and revolve its
5 funds through selling its direct investments to private
6 investors whenever it can appropriately do so on satis-
7 factory terms;

8 (4) to conduct its insurance operations with due
9 regard to principles of risk management including ef-
10 forts to share its insurance risks and reinsurance risks;

11 (5) to the maximum degree possible consistent
12 with its purposes—

13 (A) to give preferential consideration in its
14 investment insurance, reinsurance, and guaranty
15 activities to investment projects sponsored by or
16 involving United States small business; and

17 (B) to increase the proportion of projects
18 sponsored by or significantly involving United
19 States small business to at least 30 percent of all
20 projects insured, reinsured, or guaranteed by the
21 Corporation;

22 (6) to consider in the conduct of its operations the
23 extent to which less-developed country governments
24 are receptive to private enterprise, domestic and for-
25 eign, and their willingness and ability to maintain con-

1 ditions which enable private enterprise to make its full
2 contribution to the development process;

3 (7) to foster private initiative and competition and
4 discourage monopolistic practices;

5 (8) to further to the greatest degree possible, in a
6 manner consistent with its goals, the balance-of-pay-
7 ments and employment objectives of the United States;

8 (9) to conduct its activities in consonance with the
9 international trade, investment, financial, development,
10 and foreign policies of the United States Government;

11 (10) to advise and assist, within its field of compe-
12 tence, interested agencies of the United States and
13 other organizations, both public and private, national
14 and international, with respect to projects and pro-
15 grams relating to the development of private enterprise
16 in less-developed countries and areas;

17 (11)(A) to decline to issue any contract of insur-
18 ance or reinsurance, or any guaranty, or to enter into
19 any agreement to provide financing for an eligible
20 investor's proposed investment if the Corporation de-
21 termines that such investment is likely to cause such
22 investor (or the sponsor of an investment project in
23 which such investor is involved) significantly to reduce
24 the number of his employees in the United States
25 because he is replacing his United States production

1 with production from such investment which involves
2 substantially the same product for substantially the
3 same market as his United States production; and (B)
4 to monitor conformance with the representations of the
5 investor on which the Corporation relied in making the
6 determination required by clause (1);

7 (12) to decline to issue any contract of insurance
8 or reinsurance, or any guaranty, or to enter into any
9 agreement to provide financing for an eligible inves-
10 tor's proposed investment if the Corporation deter-
11 mines that such investment is likely to cause a signifi-
12 cant reduction in the number of employees in the
13 United States; and

14 (13) to the maximum extent practicable, to give
15 preferential consideration in the Corporation's oper-
16 ations to investment projects in the less developed
17 friendly countries and areas which have per capita in-
18 comes of \$580 or less in 1977 dollars.

19 **SEC. 926. CAPITAL OF CORPORATION.**

20 The capital of the Corporation shall consist of
21 \$50,000,000 of which \$40,000,000 has been made available
22 and paid in through the appropriation process and
23 \$10,000,000 has been made available through a transfer
24 from the Corporation's earned income. The Corporation may
25 increase its capital from time to time by transfers from its

1 earned income. Capital paid into the Corporation shall be
2 evidenced by an equivalent amount of capital stock issued to
3 the Secretary of the Treasury.

4 **SEC. 927. ORGANIZATION AND MANAGEMENT.**

5 (a) **STRUCTURE OF THE CORPORATION.**—The Corpo-
6 ration shall have a Board of Directors, a President, an Ex-
7 ecutive Vice President, and such other officers and staff as
8 the Board of Directors may determine.

9 (b) **BOARD OF DIRECTORS.**—All powers of the Corpo-
10 ration shall vest in and be exercised by or under the authority
11 of its Board of Directors (the “Board”) which shall consist of
12 13 Directors, including the Chairman. The United States
13 Trade Representative shall be the Chairman of the Board, ex
14 officio. The Director of the United States International De-
15 velopment Cooperation Agency shall be the Vice Chairman
16 of the Board, ex officio. Seven Directors (other than the
17 President of the Corporation, appointed pursuant to subsec-
18 tion (c) who shall also serve as a Director) shall be appointed
19 by the President of the United States, by and with the advice
20 and consent of the Senate, and shall not be officials or em-
21 ployees of the Government of the United States. At least 1 of
22 the 7 Directors appointed under the preceding sentence shall
23 be experienced in small business, one in organized labor, one
24 in cooperatives, and one in international trade. Each such
25 Director shall be appointed for a term of no more than 3

1 years. The terms of no more than 3 such Directors shall
2 expire in any one year. Such Directors shall serve until their
3 successors are appointed and qualified and may be reap-
4 pointed. The other Directors shall be officials of the Govern-
5 ment of the United States, designated by and serving at the
6 pleasure of the President of the United States. All Directors
7 who are not officers of the Corporation or officials of the
8 Government of the United States shall be compensated at a
9 rate equivalent to that of level IV of the Executive Schedule
10 (5 U.S.C. 5315) when actually engaged in the business of the
11 Corporation and may be paid per diem in lieu of subsistence
12 at the applicable rate prescribed in the standardized Govern-
13 ment travel regulations, as amended, from time to time,
14 while away from their homes or usual places of business.

15 (c) PRESIDENT OF THE CORPORATION.—The Presi-
16 dent of the Corporation shall be appointed by the President of
17 the United States, by and with the advice and consent of the
18 Senate, and shall serve at the pleasure of the President. In
19 making such appointment, the President shall take into ac-
20 count private business experience of the appointee. The
21 President of the Corporation shall be its Chief Executive Of-
22 ficer and responsible for the operations and management of
23 the Corporation, subject to bylaws and policies established by
24 the Board.

1 (d) OFFICERS AND STAFF.—The Executive Vice Presi-
2 dent of the Corporation shall be appointed by the President of
3 the United States, by and with the advice and consent of the
4 Senate, and shall serve at the pleasure of the President.
5 Other officers, attorneys, employees, and agents shall be se-
6 lected and appointed by the Corporation, and shall be vested
7 with such powers and duties as the Corporation may deter-
8 mine. Of such persons employed by the Corporation, not to
9 exceed twenty-five may be appointed, compensated, or re-
10 moved without regard to the civil service laws and regula-
11 tions. Under such regulations as the President of the United
12 States may prescribe, officers and employees of the United
13 States Government who are appointed to any of the above
14 positions may be entitled, upon removal from such position,
15 except for cause, to reinstatement to the position occupied at
16 the time of appointment or to a position of comparable grade
17 and salary. Such positions shall be in addition to those other-
18 wise authorized by law, including those authorized by section
19 5108 of title 5, United States Code.

20 (e) EXPERTS, CONSULTANTS, AND RETIRED OFFI-
21 CERS.—Experts and consultants or organizations thereof
22 may, as authorized by section 3109 of title 5, United States
23 Code, be employed for the performance of functions under
24 this part, and individuals so employed may be compensated
25 at rates not in excess of the daily equivalent of the highest

1 rate which may be paid to an employee under the General
2 Schedule established by section 5332 of title 5, United States
3 Code, and while away from their homes or regular places of
4 business, they may be paid actual travel expenses and per
5 diem in lieu of subsistence at the applicable rate prescribed in
6 the standardized Government travel regulations. Such con-
7 tracts may be renewed from time to time without limitation.
8 Service of an individual as an expert or consultant under this
9 subsection shall not be considered as employment or holding
10 of office or position bringing such individual within the provi-
11 sions of section 3323(a) of title 5, United States Code.

12 **SEC. 928. INVESTMENT INSURANCE AND OTHER PROGRAMS.**

13 (a) The Corporation is hereby authorized to do the
14 following:

15 (1) **INVESTMENT INSURANCE.—**

16 (A) To issue insurance, upon such terms and
17 conditions as the Corporation may determine, to
18 eligible investors assuring protection in whole or
19 in part against any or all of the following risks
20 with respect to projects which the Corporation
21 has approved—

22 (i) inability to convert into United
23 States dollars other currencies, or credits in
24 such currencies, received from or in respect
25 of the project;

- 1 (ii) loss due to expropriation or confisca-
2 tion by action of a foreign government; and
3 (iii) loss due to war, revolution, insur-
4 rection, or civil strife.

5 (B) Recognizing that major private invest-
6 ments in less developed friendly countries or areas
7 are often made by enterprises in which there is
8 multinational participation, including significant
9 United States private participation, the Corpora-
10 tion may make arrangements with foreign govern-
11 ments (including agencies, instrumentalities, or
12 political subdivisions thereof) or with multilateral
13 organizations and institutions for sharing liabilities
14 assumed under investment insurance for such in-
15 vestments and may in connection therewith issue
16 insurance to investors not otherwise eligible here-
17 under, except that liabilities assumed by the Cor-
18 poration under the authority of this subsection
19 shall be consistent with the purposes of this title
20 and that the maximum share of liabilities so as-
21 sumed shall not exceed the proportionate partici-
22 pation by eligible investors in the total project
23 financing.

24 (C) Not more than 10 percent of the maxi-
25 mum contingent liability of investment insurance

1 which the Corporation is authorized to issue
2 under this subsection shall be issued to a single
3 investor.

4 (2) INVESTMENT GUARANTIES.—To issue to eli-
5 gible investors guaranties of loans and other invest-
6 ments made by such investors assuring against loss due
7 to such risks and upon such terms and conditions as
8 the Corporation may determine, but such guaranties on
9 other than loan investments shall not exceed 75 per-
10 cent of such investment, and except for loan invest-
11 ments for credit unions made by eligible credit unions
12 or credit union associations, the aggregate amount of
13 investment (exclusive of interest and earnings) so guar-
14 anteed with respect to any project shall not exceed, at
15 the time of issuance of any such guaranty, 75 percent
16 of the total investment committed to any such project
17 as determined by the Corporation, which determination
18 shall be conclusive for purposes of the Corporation's
19 authority to issue any such guaranty, but not more
20 than 10 percent of the maximum contingent liability of
21 investment guaranties which the Corporation is author-
22 ized to issue as set forth in section 929(a)(2) shall be
23 issued to a single investor.

24 (3) DIRECT INVESTMENT.—To make loans in
25 United States dollars repayable in dollars or loans in

1 foreign currencies (including, without regard to section
2 1415 of the Supplemental Appropriation Act, 1953,
3 such foreign currencies which the Secretary of the
4 Treasury may determine to be excess to the normal re-
5 quirements of the United States and the Director of
6 the Bureau of the Budget may allocate) to firms pri-
7 vately owned or of mixed private and public ownership
8 upon such terms and conditions as the Corporation
9 may determine. The Corporation may not purchase or
10 invest in any stock in any other corporation, except
11 that it may (A) accept as evidence of indebtedness debt
12 securities convertible to stock, but such debt securities
13 shall not be converted to stock while held by the Cor-
14 poration, and (B) acquire stock through the enforce-
15 ment of any lien or pledge or otherwise to satisfy a
16 previously contracted indebtedness which would other-
17 wise be in default, or as the result of any payment
18 under any contract of insurance or guaranty. The Cor-
19 poration shall dispose of any stock it may so acquire as
20 soon as reasonably feasible under the circumstances
21 then pertaining. Loans may be made under this subsec-
22 tion only for projects that are sponsored by or signifi-
23 cantly involve United States small business or
24 cooperatives.

1 (4) INVESTMENT ENCOURAGEMENT.—To initiate
2 and support through financial participation, incentive
3 grant, or otherwise, and on such terms and conditions
4 as the Corporation may determine, the identification,
5 assessment, surveying and promotion of private invest-
6 ment opportunities, utilizing wherever feasible and ef-
7 fective the facilities of private investors, except that—

8 (A) the Corporation shall not finance any
9 survey to ascertain the existence, location, extent,
10 or quality of, or to determine the feasibility of un-
11 dertaking operations for the extraction of oil or
12 gas; and

13 (B) expenditures financed by the Corporation
14 during any fiscal year on surveys to ascertain the
15 existence, location, extent, or quality of, or to de-
16 termine the feasibility of undertaking operations
17 for the extraction of nonfuel minerals may not
18 exceed \$200,000.

19 (5) SPECIAL ACTIVITIES.—To administer and
20 manage special projects and programs, including pro-
21 grams of financial and advisory support which provide
22 private technical, professional, or managerial assistance
23 in the development of human resources, skills, technol-
24 ogy, capital savings, and intermediate financial and in-
25 vestment institutions and cooperatives. The funds for

1 these projects and programs may, with the Corpora-
2 tion's concurrence, be transferred to it for such pur-
3 poses from other sources, public or private.

4 (6) OTHER INSURANCE FUNCTIONS.—

5 (A) To make and carry out contracts of in-
6 surance or reinsurance, or agreements to associate
7 or share risks, with insurance companies, financial
8 institutions, any other persons, or groups thereof,
9 and employing the same where appropriate, as its
10 agent, or acting as their agent, in the issuance
11 and servicing of insurance, the adjustment of
12 claims, the exercise of subrogation rights, the
13 ceding and accepting of reinsurance, and in any
14 other matter incident to an insurance business;
15 except that (i) such agreements and contracts
16 shall be consistent with the purposes of the Cor-
17 poration set forth in section 925 of this Act and
18 shall be on equitable terms and (ii) the Corpora-
19 tion shall not make or carry out any association
20 or risk-sharing agreement for the direct under-
21 writing of insurance by the Corporation with
22 others, other than on an individual basis where
23 such direct underwriting facilitates the purposes of
24 the Corporation as set forth in section 925 of this
25 Act.

1 (B) To enter into pooling or other risk-shar-
2 ing agreements with other national or multina-
3 tional insurance or financing agencies as groups of
4 such agencies.

5 (C) To hold an ownership interest in any as-
6 sociation or other entity established for the pur-
7 poses of sharing risks under investment insurance.

8 (D) To issue, upon such terms and conditions
9 as it may determine, reinsurance of liabilities as-
10 sumed by other insurers or groups thereof in re-
11 spect of risks referred to in paragraph (1)(A).

12 (b) The authority granted by subparagraph (C) may be
13 exercised notwithstanding the prohibition under paragraph
14 (3) against the Corporation purchasing or investing in any
15 stock in any other corporation. The amount of reinsurance of
16 liabilities under this part which the Corporation may issue
17 shall not in the aggregate exceed at any one time an amount
18 equal to the amount authorized for the maximum contingent
19 liability outstanding at any one time under section 929(a)(1).
20 All reinsurance issued by the Corporation under this subsec-
21 tion shall require that the reinsured party retain for his own
22 account specified portions of liability, whether first loss or
23 otherwise.

1 SEC. 929. ISSUING AUTHORITY, DIRECT INVESTMENT FUND
2 AND RESERVES.

3 (a)(1) LIABILITY UNDER SECTION 928(a).—The maxi-
4 mum contingent liability outstanding at any one time pursu-
5 ant to insurance issued under section 928(a) shall not exceed
6 \$10,000,000,000.

7 (2) LIABILITY UNDER SECTION 928(b).—The maxi-
8 mum contingent liability outstanding at any one time pursu-
9 ant to guaranties issued under section 928(b) shall not exceed
10 in the aggregate \$1,000,000,000.

11 (3) LIMITATION.—The Corporation shall not make any
12 commitment to issue any investment guaranty that would
13 result in a fractional reserve less than 25 percent of the
14 maximum contingent liability then outstanding against guar-
15 anties issued or commitments made pursuant to section
16 928(b) or similar predecessor guaranty authority.

17 (4) LIMITATION BY CONGRESS.—The Congress, in con-
18 sidering the budget programs transmitted by the President
19 for the Corporation, pursuant to section 104 of the Govern-
20 ment Corporation Control Act, as amended, may limit the
21 obligations and contingent liabilities to be undertaken under
22 section 928 (a) and (b) as well as the use of funds for operat-
23 ing and administrative expenses.

24 (5) CONTINUATION OF AUTHORITY.—The authority of
25 section 928 (a) and (b) shall continue until September 30,
26 1985.

1 (b) REVOLVING FUND.—There shall be established a re-
2 volving fund, known as the Direct Investment Fund, to be
3 held by the Corporation. Such fund shall consist initially of
4 amounts made available under section 926, shall be available
5 for the purposes authorized under section 926(c), shall be
6 charged with realized losses and credited with realized gains
7 and shall be credited with such additional sums as may be
8 transferred to it under the provisions of section 930.

9 (c) INSURANCE AND GUARANTY FUND.—There shall
10 be established in the Treasury of the United States an insur-
11 ance and guaranty fund, which shall have separate accounts
12 to be known as the Insurance Reserve and the Guaranty
13 Reserve, which reserves shall be available for discharge of
14 liabilities, as provided in section 929(d), until such time as all
15 such liabilities have been discharged or have expired or until
16 all such reserves have been expended in accordance with the
17 provisions of this section. Such fund shall be funded by: (1)
18 the funds heretofore transferred to the Corporation out of
19 funds available to discharge liabilities under predecessor
20 guaranty authority or made available to the Corporation
21 under predecessor guaranty authority, and (2) such sums as
22 shall be appropriated pursuant to section 929(e) for such pur-
23 poses. The allocation of such funds to each such reserve shall
24 be determined by the Board after consultation with the Sec-

1 retary of the Treasury. Additional amounts may thereafter be
2 transferred to such reserves pursuant to section 930.

3 (d) PAYMENTS.—Any payment made to discharge li-
4 abilities under investment insurance or reinsurance issued
5 under section 928 or under similar predecessor guaranty au-
6 thority shall be paid first out of the insurance reserve, as long
7 as such reserve remains available, and thereafter out of funds
8 made available pursuant to section 929(e). Any payments
9 made to discharge liabilities under guaranties issued under
10 section 928(b) or under similar predecessor guaranty author-
11 ity shall be paid first out of the guaranty reserve as long as
12 such reserve remains available, and thereafter out of funds
13 made available pursuant to section 929(e).

14 (e) AUTHORIZATION OF APPROPRIATIONS.—There are
15 authorized to be appropriated to the Corporation, to remain
16 available until expended, such amounts as may be necessary
17 from time to time to replenish or increase the insurance and
18 guaranty fund, to discharge the liabilities under insurance,
19 reinsurance, or guaranties issued by the Corporation or
20 issued under predecessor guaranty authority, or to discharge
21 obligations of the Corporation purchased by the Secretary of
22 the Treasury pursuant to this subsection. However, no ap-
23 propriations shall be made to augment the insurance reserve
24 until the amount of funds in the insurance reserve is less than
25 \$25,000,000. Any appropriations to augment the insurance

1 reserve shall then only be made either pursuant to specific
2 authorization enacted after the date of enactment of this Act,
3 or to satisfy the full faith and credit provision of section 931.
4 In order to discharge liabilities under investment insurance,
5 reinsurance or guaranties, the Corporation is authorized to
6 issue from time to time for purchase by the Secretary of the
7 Treasury its notes, debentures, bonds, or other obligations;
8 but the aggregate amount of such obligations outstanding at
9 any one time shall not exceed \$250,000,000. Any such obli-
10 gation shall be repaid to the Treasury within 2 years after
11 the date of issue of such obligation. Any such obligation shall
12 bear interest at a rate determined by the Secretary of the
13 Treasury, taking into consideration the current average
14 market yield on outstanding marketable obligations of the
15 United States of comparable maturities during the month
16 preceding the issuance of any obligation authorized by this
17 subsection. The Secretary of the Treasury shall purchase any
18 obligation of the Corporation issued under this subsection,
19 and for such purchase he may use as a public debt transac-
20 tion the proceeds of the sale of any securities issued under
21 the Second Liberty Bond Act after the date of enactment of
22 this Act. The purpose for which securities may be issued
23 under such Bond Act shall include any such purchase.

1 SEC. 930. INCOME AND REVENUES.

2 In order to carry out the purposes of the Corporation,
3 all revenues and income transferred to or earned by the Cor-
4 poration, from whatever source derived, shall be held by the
5 Corporation and shall be available to carry out its purposes,
6 including without limitation—

7 (1) payment of all expenses of the Corporation, in-
8 cluding investment promotion expenses;

9 (2) transfers and additions to the insurance or
10 guaranty reserves, the direct investment fund estab-
11 lished pursuant to section 929, the capital of the Cor-
12 poration, and such other funds or reserves as the Cor-
13 poration may establish, at such time and in such
14 amounts as the Board may determine; and

15 (3) payment of dividends, on capital stock, which
16 shall consist of and be paid from net earnings of the
17 Corporation after payments, transfers, and additions
18 under paragraphs (1) and (2).

19 SEC. 931. GENERAL PROVISIONS RELATING TO INSURANCE
20 AND GUARANTY PROGRAM.

21 (a) IN GENERAL.—Insurance, guaranties, and reinsur-
22 ance issued under this Act shall cover investment made in
23 connection with projects in any less developed friendly coun-
24 try or area with the government to which the President of
25 the United States has agreed to institute a program for insur-
26 ance, guaranties, or reinsurance. The Corporation shall de-

1 termine that suitable arrangements exist for protecting the
2 interest of the Corporation in connection with any insurance,
3 guaranty, or reinsurance issued under this Act, including ar-
4 rangements concerning ownership, use, and disposition of the
5 currency, credits, assets, or investments on account of which
6 payment under such insurance, guaranty, or reinsurance is to
7 be made, and right, title, claim, or cause of action existing in
8 connection therewith.

9 (b) CERTAIN PREEXISTING OBLIGATIONS.—All guar-
10 anties issued prior to July 1, 1956, all guaranties issued
11 under sections 202(b) and 413(b) of the Mutual Security Act
12 of 1954, all guaranties heretofore issued pursuant to prior
13 guaranty authorities repealed by the Foreign Assistance Act
14 of 1969, all insurance, reinsurance, and guaranties issued
15 pursuant to title IV of the Foreign Assistance Act of 1961,
16 and this Act shall constitute obligations, in accordance with
17 the terms of such insurance, reinsurance, or guaranties, of
18 the United States of America and the full faith and credit of
19 the United States of America is hereby pledged for the full
20 payment and performance of such obligations.

21 (c) FEES.—Fees shall be charged for insurance, guaran-
22 ty, and reinsurance coverage in amounts to be determined by
23 the Corporation. In the event fees charged for investment
24 insurance, guaranties, or reinsurance are reduced, fees to be
25 paid under existing contracts for the same type of insurance,

1 guaranties, or reinsurance and for similar guaranties issued
2 under predecessor guaranty authority may be reduced.

3 (d) LIMITATION ON PERIOD.—No insurance, guaranty,
4 or reinsurance of any equity investment shall extend beyond
5 20 years from the date of issuance.

6 (e) LIMITATION ON COMPENSATION.—Compensation
7 for insurance, reinsurance, or guaranties issued under this
8 Act shall not exceed the dollar value, as of the date of the
9 investment, of the investment made in the project with the
10 approval of the Corporation plus interest, earnings or profits
11 actually accrued on said investment to the extent provided by
12 such insurance, reinsurance, or guaranty, except that the
13 Corporation may provide (1) that appropriate adjustments in
14 the insured dollar value be made to reflect the replacement
15 cost of project assets, and (2) that compensation for loss
16 under insurance of equity investment shall be equal to the net
17 book value attributable to such equity investment on the date
18 of loss. The Corporation shall limit the amount of direct in-
19 surance and reinsurance issued by it under section 104 so
20 that risk of loss as to at least 10 percent of the total invest-
21 ment of the insured and its affiliates in the project is borne by
22 the insured and such affiliates, except that limitation shall not
23 apply to direct insurance or reinsurance of (1) investments by
24 small businesses or (2) loans by banks or other financial insti-
25 tutions to unrelated parties.

1 (f) FRAUD, ETC.—No payment may be made under any
2 guaranty, insurance, or reinsurance issued pursuant to this
3 Act for any loss arising out of fraud or misrepresentation for
4 which the party seeking payment is responsible.

5 (g) FOREIGN INVESTMENT INSURANCE.—Insurance,
6 guaranties, or reinsurance of a loan or equity investment of
7 an eligible investor in a foreign bank, finance company, or
8 other credit institution shall extend only to such loan or
9 equity investment and not to any individual loan or equity
10 investment made by such foreign bank, finance company, or
11 other credit institution.

12 (h) PAYMENT OF CLAIMS.—Claims arising as a result
13 of insurance, reinsurance or guaranty operations under this
14 part or under predecessor guaranty authority may be settled,
15 and disputes arising as a result thereof may be arbitrated
16 with the consent of the parties, on such terms and conditions
17 as the Corporation may determine. Payment made pursuant
18 to any such settlement, or as a result of an arbitration award,
19 shall be final and conclusive notwithstanding any other provi-
20 sion of law.

21 (i) CONTRACTS PRESUMED TO COMPLY.—Each guar-
22 anty contract executed by such officer or officers as may be
23 designated by the Board shall be conclusively presumed to be
24 issued in compliance with the requirements of this part.

25 (j) LIMITATIONS ON PAYMENTS.—

(1) No payment may be made under any insurance, or reinsurance which is issued under this part on or after the date of enactment of this Act for any loss occurring with respect to a project, if the preponderant cause of such loss was an act by the investor seeking payment under this part, by a person possessing majority ownership and control of the investor at the time of the act, or by any agent of such investor or controlling person, and a court of the United States has entered a final judgment that such act constituted a violation under the Foreign Corrupt Practices Act of 1977.

(2) The Corporation shall adopt regulations setting forth appropriate conditions under which any person convicted under the Foreign Corrupt Practices Act of 1977 for an offense related to a project insured or otherwise supported by the Corporation shall be suspended, for a period of not more than 5 years, from eligibility to receive any insurance, reinsurance, guaranty loan, or other financial support authorized by this Act.

SEC. 932. DEFINITIONS.

As used in this part—

(1) the term “investment” includes any contribution or commitment of funds, commodities, capital goods, equipment, services, patents, processes, or tech-

1 niques, in the form of (A) a loan or loans to an ap-
2 proved project, (B) the purchase of a share of owner-
3 ship in any such project, (C) participation in royalties,
4 earnings, or profits of any such project, and (D) the
5 furnishing of commodities, capital goods, equipment or
6 services pursuant to a lease or other contract;

7 (2) the term "expropriation" includes, but is not
8 limited to, any abrogation, repudiation, or impairment
9 by a foreign government of its own contract with an
10 investor with respect to a project, where such abroga-
11 tion, repudiation, or impairment is not caused by the
12 investor's own fault or misconduct, and materially ad-
13 versely affects the continued operation of the project;

14 (3) the term "eligible investor" means: (A) United
15 States citizens; (B) corporations, partnerships, or other
16 associations including nonprofit associations, created
17 under the laws of the United States or any State or
18 territory thereof in which the United States citizens
19 have a significant interest; and (C) foreign corpora-
20 tions, partnerships, or other associations majority con-
21 trol of which is held by such United States citizens,
22 corporations, partnerships, or other associations, how-
23 ever, in the case of any loan investment a final deter-
24 mination of eligibility may be made at the time the in-
25 surance or guaranty is issued; in all other cases, the

investor must be eligible at the time a claim arises as well as the time the insurance or guaranty is issued; and

(4) the term “predecessor guaranty authority” means prior guaranty authorities (other than housing guaranty authorities) repealed by this part, the Foreign Assistance Act of 1969, sections 202(b) and 413(b) of the Mutual Security Act of 1954, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of authority relating to informational media guaranties).

SEC. 933. GENERAL PROVISIONS AND POWERS.

(a) **PRINCIPAL OFFICE.**—The Corporation shall have its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be resident thereof.

(b) **PREDECESSOR PROGRAMS.**—The Corporation shall retain all obligations, assets, and related rights and responsibilities arising out of, or related to, predecessor programs and authorities similar to those provided for in section 928 (a), (b), and (d).

(c) **GOVERNMENT CORPORATION CONTROL ACT.**—The Corporation shall be subject to the applicable provisions of the Government Corporation Control Act, except as otherwise provided in this Act.

1 (d) GENERAL AUTHORITY.—To carry out the purposes
2 of this Act, the Corporation is authorized to adopt and use a
3 corporate seal, which shall be judicially noticed; to sue and
4 be sued in its corporate name; to adopt, amend, and repeal
5 bylaws governing the conduct of its business and the per-
6 formance of the powers and duties granted to or imposed
7 upon it by law; to acquire, hold, or dispose of, upon such
8 terms and conditions as the Corporation may determine, any
9 property, real, personal, or mixed, tangible or intangible, or
10 any interest therein; to invest funds derived from fees and
11 other revenues in obligations of the United States and to use
12 the proceeds therefrom, including earnings and profits, as it
13 shall deem appropriate; to indemnify directors, officers, em-
14 ployees, and agents of the Corporation for liabilities and ex-
15 penses incurred in connection with their Corporation activi-
16 ties; to require bonds of officers, employees, and agents and
17 pay the premiums therefor; notwithstanding any other provi-
18 sion of law, to represent itself or to contract for representa-
19 tion in all legal and arbitral proceedings; to purchase, dis-
20 count, rediscount, sell, and negotiate, with or without its en-
21 dorsement or guaranty, and guarantee notes, participation
22 certificates, and other evidence of indebtedness (provided that
23 the Corporation shall not issue its own securities, except par-
24 ticipation certificates for the purpose of carrying out section
25 925(c) or participation certificates as evidence of indebted-

1 ness held by the Corporation in connection with settlement of
2 claims under section 931(h)); to make and carry out such
3 contracts and agreements as are necessary and advisable in
4 the conduct of its business; to exercise the priority of the
5 Government of the United States in collecting debts from
6 bankrupt, insolvent, or decedents' estates; to determine the
7 character of and the necessity for its obligations and expendi-
8 tures, and the manner in which they shall be incurred, al-
9 lowed, and paid, subject to provisions of law specifically ap-
10 plicable to Government corporations; to collect or compro-
11 mise any obligations assigned to or held by the Corporation
12 including any legal or equitable rights accruing to the Corpo-
13 ration; and to take such actions as may be necessary or ap-
14 propriate to carry out the powers herein or hereafter specifi-
15 cally conferred upon it.

16 (e) USE OF FUNDS.—Funds made available for the pur-
17 pose of this part may be used for printing and binding without
18 regard to the provisions of any other law, and for expendi-
19 tures outside the United States for the procurement of sup-
20 plies and services without regard to such laws and regula-
21 tions governing the obligation and expenditure of funds of the
22 United States Government as may be necessary to accom-
23 plish the purposes of this part.

24 (f) APPLICATION OF OTHER LAWS.—No provision of
25 any other law shall prohibit the operation of the programs

1 authorized by this part in any less developed country if the
2 President of the United States has determined that their op-
3 eration is important to the national interest.

4 (g) ENVIRONMENTAL IMPLICATIONS.—The Corpora-
5 tion shall develop and implement specific criteria intended to
6 minimize the potential environmental implications of projects
7 undertaken by investors abroad in accordance with any of the
8 programs authorized by this part.

9 (h) TRADE PROFILE.—The Corporation shall prepare
10 and maintain for each investment project it insures, finances,
11 or reinsures, a profile consisting of data appropriate to meas-
12 ure the expected trade and developmental effects of such
13 project.

14 (i) HUMAN RIGHTS, ETC.—The Corporation shall take
15 into account in the conduct of its programs in a country, in
16 consultation with the Secretary of State, all available infor-
17 mation about observance of and respect for human rights and
18 fundamental freedoms in such country and the effect the op-
19 eration of such programs will have on human rights and fun-
20 damental freedoms in such country. The Corporation shall
21 not provide any insurance, reinsurance, guaranty, or loan for
22 any project in a country when the Secretary of State has
23 made a determination under section 116 of the Foreign As-
24 sistance Act that the government of such country engages in
25 a consistent pattern of gross violations of internationally rec-

1 ognized human rights unless such a project will directly bene-
2 fit the needs of the needy people in such a country or the
3 national security interest of the United States.

4 (j) APPLICATION OF 18 U.S.C. 955.—The provisions of
5 section 955 of title 18 of the United States Code shall not
6 apply to prevent any person, including any individual, part-
7 nership, corporation, or association, from acting for, or par-
8 ticipating in, any operation or transaction arising under this
9 part, or from acquiring any obligation issued in connection
10 with any operation or transaction arising under this part.

11 (k) OVERRIDE OF RENEGOTIATION ACT.—Whenever
12 the President of the United States determines it to be in fur-
13 therance of the purposes of this part, the functions authorized
14 under this part may be performed without regard to such
15 provisions of law (other than the Renegotiation Act of 1951
16 (50 U.S.C. App. 1211 et seq.)), regulating the making, per-
17 formance, amendment, or modification of contracts and the
18 expenditure of funds of the United States Government as the
19 President may specify.

20 (l) CONTRACTS, ETC.—The Corporation may make and
21 perform agreements and contracts with, or enter other trans-
22 actions with, any individual, corporation, or other body of
23 persons, government or government agency, whether within
24 or without the United States and international organizations

1 in furtherance of the purposes and within the limitations of
2 this part.

3 (m) CARRYOVER OF FUNDS.—Except as otherwise pro-
4 vided in this part, funds shall be available to carry out the
5 provisions of this part as authorized and appropriated each
6 fiscal year. Provisions of this Act authorizing the appropri-
7 ation of funds shall be construed to authorize the granting in
8 any appropriation Act of authority to enter into contracts
9 within the amounts so authorized to be appropriated, creating
10 obligations in advance of appropriations.

11 (n) FOREIGN CURRENCIES.—Foreign currencies re-
12 ceived by the Corporation as a result of its operations may be
13 transferred to the Secretary of the Treasury for sale to agen-
14 cies of the United States Government for payment of their
15 obligations outside the United States, and the United States
16 dollars received as reimbursement shall be returned to the
17 Corporation. Foreign currencies so received which are in
18 excess of the requirements of the United States Government
19 in payment of its obligations outside the United States shall
20 be available for the authorized purposes of this part.

21 (o) GIFTS, BEQUESTS, ETC.—The Corporation may
22 accept and use in furtherance of the purposes of this part,
23 money, funds, property, and services of any kind made avail-
24 able by gift, devise, bequest, grant, or otherwise for such
25 purpose.

1 **SEC. 934. SMALL BUSINESS DEVELOPMENT.**

2 The Corporation shall undertake, in cooperation with
3 appropriate departments, agencies, and instrumentalities of
4 the United States as well as private entities and others, to
5 broaden the participation of United States small business, co-
6 operatives, and other small United States investors in the
7 development of small private enterprise in less developed
8 friendly countries or areas. The Corporation shall allocate up
9 to 50 per centum of its annual net income, after making suit-
10 able provision for transfers and additions to reserves, to assist
11 and facilitate the development of projects consistent with the
12 provisions of this section. Such funds may be expended, not-
13 withstanding the requirements of section 925(a), on such
14 terms and conditions as the Corporation may determine,
15 through loans, grants, or other programs authorized by sec-
16 tion 928.

17 **SEC. 935. REPORTS TO THE CONGRESS.**

18 After the end of each fiscal year, the Corporation shall
19 submit to the Congress a complete and detailed report of its
20 operations during such fiscal year. Such report shall
21 include—

22 (1) an assessment, based upon the profiles re-
23 quired by section 933(h), of the trade and development
24 impact and benefits of the projects with respect to
25 which such profiles are prepared, and of the extent to
26 which the operations of the Corporation complement or

are compatible with the trade and development policies of the United States; and

(2) a description of any project for which the Corporation—

(A) refused to provide any insurance, reinsurance, guaranty, financing, or other financial support, on account of gross violations of human rights referred to in section 933(i); or

(B) notwithstanding such violations, provided such insurance, reinsurance, guaranty, financing, or financial support, on the basis of a determination (i) that the project will directly benefit the needy people in the country in which the project is located, or (ii) that the national security interest so requires.

Subpart B—Amendment of Foreign Assistance Act of 1961

SEC. 941. CONFORMING AMENDMENTS.

The Foreign Assistance Act of 1961 is hereby amended as follows:

(1) Section 222 is amended by deleting the parenthetical language in line three of subsection (a) thereof and inserting: “(as defined in section 108(c) of the Overseas Private Investment Corporation Act)”.

(2) Section 222A is amended by deleting subsections (f) and (g) thereof.

1 (3) Section 610 is amended by deleting the follow-
2 ing language in subsection (a) thereof: “(except funds
3 made available pursuant to title IV of chapter 2 of
4 Part I)”.

5 (4) Section 620 is amended by deleting subsection
6 (l) thereof.

7 (5) Section 636 is amended by deleting the follow-
8 ing language in subsection (f) thereof: “or by the Cor-
9 poration established under title IV of chapter 2 of part
10 I with respect to loan activities which it carries out
11 under the provisions of the Agricultural Trade Devel-
12 opment and Assistance Act of 1954, as amended”.

13 (6) Title IV of chapter 2 of part I of the Foreign
14 Assistance Act of 1961 is repealed.

15 **SEC. 942. TRANSITION PROVISIONS.**

16 (a) **CONTINUATION OF OPIC FUNCTIONS AND AU-**
17 **THORITY.**—The amendments made by this part shall not be
18 construed to effect a termination of any statutory authority
19 for the Overseas Private Investment Corporation, except to
20 the extent that such amendments provide for a change in the
21 statutory authority for the Corporation as it existed on the
22 day before the date of enactment of this Act. The status of
23 any employee, equipment, funds, or authority for credits,
24 loans, or guarantees by the Corporation on the day before the
25 date of enactment of this Act shall not be affected by the

1 amendments made by this part except to the extent that the
2 statutory authority for the Corporation, as amended by this
3 part, is different from that of the Corporation on the day
4 before such date.

5 (b) SAVINGS PROVISIONS.—

6 (1) All orders, determinations, rules, regulations,
7 permits, grants, contracts, certificates, licenses, and
8 privileges—

9 (A) which have been issued, made, granted,
10 or allowed to become effective by the Corporation
11 or by a court of competent jurisdiction in the per-
12 formance of functions which are carried out under
13 the amendments made by this Act, and

14 (B) which are in effect at the time this part
15 takes effect,

16 shall continue in effect according to their terms until
17 modified, terminated, superseded, set aside, or revoked
18 in accordance with the law by the Corporation, by a
19 court of competent jurisdiction, or by operation of law.

20 (2) The amendments made by this part shall not
21 affect any proceedings, including notices of proposed
22 rulemaking, or any application for any license, permit,
23 certificate, or financial assistance pending on the effec-
24 tive date of this Act before the Corporation; but such
25 proceedings and applications, to the extent that they

1 relate to functions for which the authority is reenacted,
2 shall be continued. Orders shall be issued in such pro-
3 ceedings, appeals shall be taken therefrom, and pay-
4 ments shall be made pursuant to such orders, as if this
5 part had not been enacted; and orders issued in any
6 such proceedings shall continue in effect until modified,
7 terminated, superseded, or revoked by the Corporation,
8 by a court of competent jurisdiction, or by operation of
9 law. Nothing in this paragraph shall be deemed to pro-
10 hibit the discontinuance or modification of any such
11 proceeding under the same terms and conditions and to
12 the same extent that such proceeding could have been
13 discontinued or modified if this part had not been
14 enacted.

15 (3) The provisions of this part shall not affect
16 suits commenced prior to the effective date of this part,
17 and, in all such suits, proceedings shall be had, appeals
18 taken, and judgments rendered in the same manner
19 and effect as if this part had not been enacted.

20 (4) No suit, action, or other proceeding com-
21 menced by or against any officer in the official capacity
22 of such individual as an officer of the Corporation shall
23 abate by reason of the enactment of this part. No
24 cause of action by or against the Corporation, or by or
25 against any officer thereof in the official capacity of

1 such officer, shall abate by reason of the enactment of
2 this part.

3 (c) **TECHNICAL AND CONFORMING CHANGES.**—The
4 President of the Overseas Private Investment Corporation
5 shall, within 90 days after the date of enactment of this Act,
6 submit to the Committee on Foreign Relations of the Senate
7 and the Committee on Foreign Affairs of the House of Rep-
8 resentatives, a draft of any technical or conforming changes
9 in the Foreign Assistance Act of 1961, and any other statute
10 of the United States, which are necessary to reflect the
11 changes in the substantive provisions of law, and cross-refer-
12 ences to provisions made by this part.

13 **PART 3—ROLE OF ALL UNITED STATES AGENCIES**
14 **IN EXPORT EXPANSION**

15 **SEC. 951. INTERNATIONAL DEVELOPMENT COOPERATION**
16 **AGENCY.**

17 (a) **EXPORT POTENTIAL TO BE CONSIDERED.**—When
18 considering which projects or other activities to include in
19 United States foreign aid programs around the world, the
20 potential for United States exports in the short, medium, and
21 long run shall be a primary decisionmaking factor.

22 (b) **REIMBURSABLE DEVELOPMENT PROGRAM.**—

23 (1) **FINDINGS.**—The Congress finds that—

24 (A) the reimbursable development program
25 provides funds for feasibility studies that can and

1 should provide a valuable push for United States
2 exports. The program should not be treated as
3 only a foreign aid program, but as a legitimate aid
4 to United States exporters of goods and services.
5 The program should be expanded and should
6 permit applications directly from United States
7 firms.

8 (B) the reimbursable development program
9 under sections 607(a) and 661 of the Foreign As-
10 sistance Act of 1961 provides valuable opportuni-
11 ties for the promotion of United States exports
12 and the furtherance of economic development in
13 the developing nations through the reimbursable
14 development program; and

15 (C) other developed countries have made
16 much greater use of the kinds of programs author-
17 ized by the above sections than has the United
18 States, enhancing their own economic relations
19 with developing countries.

20 (2) OFFICE OF REIMBURSABLE DEVELOPMENT
21 TO BE SEPARATED FROM AID.—The Director of the
22 International Development Cooperation Agency shall
23 transfer the functions of the Office of Reimbursable
24 Development from the Agency for International Devel-
25 opment to an independent functional status within the

1 International Development Cooperation Agency, the
2 head of which shall have responsibility for the adminis-
3 tration of the reimbursable development program and
4 shall report directly to the Director.

5 **SEC. 952. OFFICE OF MANAGEMENT AND BUDGET.**

6 Budget allocated to export-related activities should re-
7 flect the new high priority assigned to export expansion.
8 Office of Management and Budget should do everything in its
9 power to assure that adequate budget allocations are made
10 available to carry out the programs prescribed in this Act and
11 others considered necessary by export policymakers. Budget
12 cuts should be called for only when the reviews of export
13 expansion programs called for in section 913 indicate such a
14 need. Personnel assigned to examine and determine budget
15 levels for export-related programs should have adequate
16 knowledge and training in the international trade field to un-
17 derstand what is required to achieve export policy objectives.

18 **SEC. 953. ROLE OF THE JUSTICE DEPARTMENT.**

19 In interpreting and implementing laws that affect
20 international trade and business practices, the Department of
21 Justice should do what it can to facilitate procedures for ex-
22 porters. In cases of vagueness in the laws, interpretations
23 should favor export interests unless clearly against the na-
24 tional interest.

1 SEC. 954. SMALL BUSINESS ADMINISTRATION.

2 Small businesses often require special assistance to
3 enter the export market. The Small Business Administration
4 can play a key role in advising small business, augmenting
5 programs of the International Trade Administration. In addi-
6 tion to the new programs called for in this Act, the staff of
7 the Small Business Administration should be generally aware
8 of the benefits of export to small business development and
9 should use every opportunity to provide information and as-
10 sistance to potential exporters.

11 SEC. 955. DEPARTMENT OF ENERGY.

12 In making policy decision on coal, nuclear power fuels
13 and other energy matters, the impact on the ability of the
14 United States to export in a reliable manner should be a key
15 consideration.

16 SEC. 956. THE CONGRESS.

17 Each committee of the Congress shall include in their
18 reports of bills and resolutions a section on the effect, if any,
19 of the bill or resolution on the international competitiveness
20 of the United States, including, but not limited to, exports,
21 productivity, research, testing, and development, financing,
22 disincentives or restraints, and additional production, manu-
23 facturing or distribution costs.

1 **PART 4—NATIONAL EXPORT COUNCIL**

2 **SEC. 961. ESTABLISHMENT AND MEMBERSHIP.**

3 (a) **IN GENERAL.**—There is hereby created a National
4 Export Council (hereinafter referred to as “the Council”)
5 which shall be composed of the following members:

6 (1)(A) the Secretary of State;

7 (B) the Secretary of the Treasury;

8 (C) the Secretary of Agriculture;

9 (D) the Secretary of Commerce;

10 (E) the Secretary of Labor;

11 (F) the United States Trade Representative;

12 (G) the President and Chairman of the Export-
13 Import Bank of the United States; and

14 (H) the Administrator of the Small Business
15 Administration;

16 (2) three members of the United States Senate,
17 designated by the President of the Senate and three
18 members of the United States House of Representa-
19 tives designated by the Speaker of the House;

20 (3) three Governors of States or territories, desig-
21 nated by the President; and

22 (4) no more than eighteen private citizens repre-
23 senting business and industry, agriculture, international
24 banking, and labor to be appointed by the President,

1 including at least five small business persons who are
2 actively involved in export trade.

3 (b) CHAIRMAN.—The President shall appoint a Chair-
4 man of the Council from among its private citizen members
5 who shall preside over the meetings of the Council.

6 (c) EXECUTIVE DIRECTOR.—The Secretary of Com-
7 merce, with the concurrence of the Chairman, shall appoint
8 an Executive Director.

9 SEC. 962. FUNCTIONS.

10 (a) IN GENERAL.—The Council shall serve as a na-
11 tional advisory body on matters relating to United States
12 export trade. In carrying out such functions, the Council
13 shall—

14 (1) survey and evaluate the export promotion and
15 development activities of the communities represented
16 by the membership;

17 (2) identify and examine specific problems which
18 business, industrial, and agricultural practices may
19 cause for export trade;

20 (3) examine the needs of business, industry, and
21 agriculture to expand their efforts; and

22 (4) recommend specific legislative and administra-
23 tive solutions to these problems and needs.

24 (b) LIAISON; EXPORT EXPANSION ENCOURAGE-
25 MENT.—The Council shall—

1 (1) act as liaison among the communities repre-
2 sented by its membership and may provide a forum for
3 those communities on current and emerging problems
4 and issues in the field of export promotion and develop-
5 ment, and

6 (2) encourage the business, industrial, and agricul-
7 tural communities to enter new foreign markets and to
8 expand existing export programs.

9 (c) **ADVICE ON FEDERAL MATTERS.**—The Council
10 shall provide advice on Federal plans and actions that affect
11 export promotion and development policies which have an
12 impact on those communities represented by its membership.

13 (d) **EXECUTIVE AND OTHER COMMITTEES.**—The
14 Council shall establish an executive committee and such
15 other subordinate committees it considers necessary for the
16 performance of its functions including, but not limited to,
17 committees on export administration, export expansion and
18 domestic disincentives, small business and export promotion,
19 the General Agreement on Tariffs and Trade and the Multi-
20 lateral Trade Negotiations, and Agriculture and East-West
21 Trade. The chairman and members of the executive and sub-
22 ordinate committees shall be designated by the Chairman of
23 the Council from among the membership of the Council.

1 SEC. 963. ADMINISTRATIVE PROVISIONS.

2 (a) IN GENERAL.—The Secretary of Commerce shall
3 provide the Council, including its executive and subordinate
4 committees, with administrative and staff services, support
5 and facilities as may be necessary for the effective perform-
6 ance of its functions.

7 (b) COMPENSATION.—Each member of the Council, in-
8 cluding its executive and subordinate committees, who is not
9 otherwise paid a salary by the Federal Government, shall
10 receive no compensation from the United States by virtue of
11 their service on the Council, but all members may receive the
12 transportation and travel expenses, including per diem in lieu
13 of subsistence, authorized by law.

14 (c) APPLICATION OF FEDERAL ADVISORY COMMITTEE
15 ACT.—The functions of the President under the Federal Ad-
16 visory Committee Act (5 U.S.C. App. I) except that of re-
17 porting annually to the Congress, which are applicable to the
18 Council shall be performed by the Secretary of Commerce.

19 SEC. 964. ANNUAL REPORT.

20 The Council shall transmit to the President and the
21 Congress, not later than March 31 of each year, a full report
22 on its activities, and the activities of its subordinate
23 committees.

24 SEC. 965. AUTHORIZATIONS.

25 There are authorized to be appropriated such sums as
26 may be necessary to carry out this title.

1 **PART 5—COMMERCE DEPARTMENT**

2 **SEC. 971. COMMERCIAL OFFICERS OVERSEAS.**

3 In order to develop, maintain, and expand international
4 markets for the products and services of the United States; to
5 insure the promotion and protection of United States trade
6 and commercial services abroad for United States trade and
7 commercial interests around the world; to provide trade and
8 commercial services abroad for United States firms and busi-
9 nesses and trade and commercial organizations; and to secure
10 trade and commercial information useful for the expansion of
11 exports of United States products and services, the Secretary
12 of Commerce (hereinafter referred to in this part as the "Sec-
13 retary") is authorized to appoint such commercial ministers,
14 commercial counselors, and commercial attachés, who shall
15 be employees of the Department of Commerce (and who shall
16 report to the Under Secretary for International Trade), as
17 the Secretary determines to be necessary to carry out the
18 purposes of this title and to assign such commercial minis-
19 ters, commercial counselors and commercial attachés to serv-
20 ice abroad.

21 **SEC. 972. TRAINING OF COMMERCIAL OFFICERS.**

22 Upon appointment, commercial officers shall participate
23 in training sessions designed by the Secretary, in cooperation
24 with the Department of State, the Foreign Service Institute,
25 and other Federal agencies, to study export and import pro-

1 grams and to examine the needs of United States businesses
2 for export information and assistance. As part of this training
3 program the Secretary shall assign each officer to a field
4 office of the Department to work in conjunction with the De-
5 partment's field personnel responsible for implementation of
6 export programs.

7 **SEC. 973. RANK AND PRIVILEGES.**

8 Commercial ministers, commercial counselors, and com-
9 mercial attachés assigned to posts abroad shall be accorded
10 the same rank and privileges as those of other ministers,
11 counselors, or attachés in the United States embassies and
12 consulates.

13 **SEC. 974. RELATIONSHIP TO DIPLOMATIC MISSION.**

14 Upon the request of the Secretary, the Secretary of
15 State shall regularly and officially attach the commercial
16 ministers, commercial counselors, and commercial attachés
17 appointed and assigned hereunder to the diplomatic mission
18 of the United States in the country in which such commercial
19 ministers, commercial counselors, or commercial attachés or
20 other personnel are to be assigned by the Secretary, and
21 shall obtain for them diplomatic privileges and immunities
22 equivalent to those enjoyed by Foreign Service personnel of
23 comparable rank and salary.

1 SEC. 975. FUNCTIONS AND DUTIES.

2 Commercial ministers, commercial counselors, and com-
3 mercial attachés appointed and assigned abroad by the Secre-
4 tary under the title, and other personnel employed under
5 their direction, in furtherance of the purposes set forth in
6 section 971 and in accordance with regulations prescribed by
7 the Secretary, shall have the following functions and duties:

8 (1) trade and commercial services, including, but
9 not limited to—

10 (A) protection and promotion of United
11 States trade and commercial interests and invest-
12 ments, including industrial property rights, within
13 their districts;

14 (B) current market oriented assistance to
15 United States firms and businesses visiting or op-
16 erating within their districts;

17 (C) appointments and introductions for
18 United States business persons visiting within
19 their districts;

20 (D) assistance in pursuing trade
21 opportunities;

22 (E) assistance, when appropriate, in the
23 adjustment of trade and commercial disputes in-
24 volving United States firms or commercial and fi-
25 nancial interest; and

1 (F) assistance to other United States Gov-
2 ernment agencies or State agencies, and to firms
3 and businesses with respect to trade missions,
4 trade fairs, and other international trade and com-
5 mercial exhibitions;

6 (2) export promotion, including, but not limited
7 to—

8 (A) the promotion of United States exports
9 and commercial interests in their districts;

10 (B) the creation, within the scope of their
11 duties and as appropriate, of a demand for United
12 States products and services in such districts; and

13 (C) the promotion of tourism in the United
14 States by residents of the districts to which they
15 are assigned;

16 (3) semiannual reports to the Secretary including,
17 but not limited to, the following information:

18 (A) market conditions, commercial develop-
19 ments, and the economic climate within their dis-
20 tricts, emphasizing changes between reports;

21 (B) implementation of and compliance with
22 the provisions of multilateral and bilateral trade
23 agreements with the United States by the govern-
24 ment, agencies, or instrumentalities of the country
25 to which they are assigned;

1 (C) specific industry and commodity
2 conditions;

3 (D) foreign law and business practices affect-
4 ing United States trade and commercial interests;
5 and

6 (E) trade opportunities on an industry basis;

7 (4) maintain and make available current data on
8 the commercial standing and capacity of foreign firms
9 within their districts; and

10 (5) such other functions and duties as the Secre-
11 tary determines to be necessary and proper for achiev-
12 ing the purposes of this title.

13 **SEC. 976. ASSIGNMENT TO UNITED STATES.**

14 Any officer or employee appointed and assigned to a
15 post abroad pursuant to this part may, in the discretion of the
16 Secretary, be assigned for duty in the continental United
17 States without regard to the civil service laws (and without
18 reduction in grade if an appropriate position at the em-
19 ployee's grade is not available in any agency of the Depart-
20 ment of Commerce) for a period of not more than 3 years.

21 **SEC. 977. OFFICE SPACE, EQUIPMENT, AND ADMINISTRATIVE**
22 **AND CLERICAL PERSONNEL.**

23 The Secretary of State, upon request of the Secretary,
24 shall provide office space, equipment, facilities, and such
25 other administrative and clerical services as may be required

1 for the performance of the functions and duties of the com-
2 mercial ministers, commercial counselors, and commercial at-
3 tachés appointed and assigned abroad under this part, and
4 other personnel employed under their direction, appropriate
5 to Foreign Service officers or other personnel of the same
6 rank and salary. The Secretary is authorized to reimburse or
7 advance funds to the Secretary of State for such services.
8 The Secretary is authorized, in accordance with applicable
9 law and regulations prescribed by the Secretary, to employ
10 locally such United States nationals or other personnel, as
11 the Secretary deems necessary to further the purpose set
12 forth in section 971 of this part or to the exercise and carry-
13 ing out of the functions and duties of the commercial minis-
14 ters, commercial counselors, and commercial attachés and
15 other personnel appointed and assigned abroad under this
16 part.

17 **SEC. 978. AGENCY, SERVICES, PERSONNEL, AND FACILITIES.**

18 Upon the request of the Secretary, each Federal agency
19 may make its services, personnel, and facilities available to
20 the commercial ministers, commercial counselors, and com-
21 mercial attachés appointed and assigned to a post abroad
22 under this part in the performance of their functions and
23 duties. The Secretary is authorized to reimburse or advance
24 funds to any such agency for services, personnel, and facili-
25 ties so made available.

1 SEC. 979. PERFORMANCE OF FUNCTIONS IN FOREIGN
2 LOCALITIES.

3 Each commercial minister, commercial counselor, or
4 commercial attaché appointed and assigned under this part to
5 a United States diplomatic mission abroad, may carry out the
6 functions and duties authorized hereunder in such other na-
7 tions as the Secretary, in consultation with the Secretary of
8 State, may determine to be necessary and proper in order to
9 carry out the purposes of this part.

10 SEC. 980. REPORTS AND DISPATCHES—AVAILABILITY TO
11 INTERESTED GOVERNMENT AGENCIES.

12 The reports and dispatches prepared by the commercial
13 ministers, commercial counselors, or commercial attachés ap-
14 pointed and assigned abroad under this title shall be made
15 available to the Department of State, the Small Business
16 Administration and to other interested agencies of the
17 Government.

18 SEC. 981. REPRESENTATIVE ALLOWANCES.

19 Any commercial minister, commercial counselor, or
20 commercial attaché appointed and assigned by the Secretary
21 to a post abroad under this part, under regulations prescribed
22 by the Secretary, may be authorized to receive a representa-
23 tion allowance in an amount to be determined by
24 considering—

1 (1) the extent to which such commercial minister,
2 commercial counselor, or commercial attaché can effec-
3 tively use funds to further the purposes of this part;

4 (2) travel and entertainment expenses customary
5 in the private trade for persons of comparable rank and
6 salary; and

7 (3) the customs and practices in the nation to
8 which he or she is assigned.

9 **SEC. 982. ALLOWANCES AND BENEFITS.**

10 The Secretary may, under such rules and regulations as
11 may be prescribed by the President or his designee, provide
12 to the commercial ministers, commercial counselors, and
13 commercial attachés appointed and assigned under this part,
14 allowances and benefits similar to those provided by title IX
15 of the Foreign Service Act of 1946. Leaves of absence for
16 commercial ministers, commercial counselors, and commer-
17 cial attachés appointed and assigned under this part shall be
18 on the same basis as is provided for Foreign Service of the
19 United States by the Annual and Sick Leave Act of 1951.

20 **SEC. 983. ADVANCE PAYMENT FOR RENT AND OTHER SERV-**

21 **ICES: FUNDS FOR COURTESIES TO FOREIGN**
22 **REPRESENTATIVES.**

23 In any foreign country where customs or practices re-
24 quire payment in advance for rent or other service, such pay-
25 ment may be authorized by the Secretary in accordance with

1 regulations prescribed by the Secretary, upon consultation
2 with the Secretary of State. Funds available for the purposes
3 of this part may be used for extending courtesies to repre-
4 sentatives of foreign countries, when so provided in appropri-
5 ation or other law.

6 **PART 6—Review of United States Export Programs**

7 **SEC. 991. REVIEW.**

8 (a) **REPORT BY COMPTROLLER GENERAL.**—Within 12
9 months after the enactment of this Act, the Comptroller Gen-
10 eral of the United States shall (1) report to the Congress of
11 the United States on his analysis of the organization of inter-
12 national trading and financing programs of the United States;
13 (2) compare and analyze the structure and effectiveness of
14 foreign export promotion programs; (3) evaluate the trade ac-
15 tivities of the International Trade Administration of the De-
16 partment of Commerce, Export-Import Bank, Overseas Pri-
17 vate Investment Corporation, and trade analysis capability of
18 the Office of Management and Budget, Department of the
19 Treasury, and Department of State; and (4) make such rec-
20 ommendations as he deems feasible for the establishment or
21 reorganization of new export promotion agencies or the adop-
22 tion of new programs.

23 (b) **ASSISTANCE.**—In carrying out his functions under
24 section 904(a), the Comptroller General shall have such co-

1 operation and support services from the Library of Congress
2 and the Congressional Research Service as required.

3 (c) PERIODIC REVIEW.—It is the sense of Congress
4 that the appropriate committees of Congress shall review the
5 trade organization of the United States Government on a
6 regular and periodic basis and evaluate the performance and
7 effectiveness of such organization and, if appropriate, recom-
8 mend the reorganization of such functions to increase the ex-
9 ports and international competitiveness of United States
10 firms.



H. R. 7736

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

IN THE HOUSE OF REPRESENTATIVES

JULY 2, 1980

Mr. LAFALCE introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs, Foreign Affairs, and the Judiciary

A BILL

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—EXPORT TRADING COMPANIES**

4 **SHORT TITLE**

5 SEC. 101. This title may be cited as the “Export Trad-
6 ing Company Act of 1980”.

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

(2) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

(4) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters);

(6) State and local government activities which initiate, facilitate, or expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(7) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations; and

(8) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term “export trade” means trade or commerce in goods sourced in the United States or services produced in the United States exported, or in the

1 course of being exported, from the United States to
2 any foreign nation;

3 (2) the term "goods produced in the United
4 States" means tangible property manufactured, pro-
5 duced, grown, or extracted in the United States, the
6 cost of the imported raw materials and components
7 thereof shall not exceed 50 per centum of the sales
8 price;

9 (3) the term "services produced in the United
10 States" includes, but is not limited to accounting,
11 amusement, architectural, automatic data processing,
12 business, communications, construction franchising and
13 licensing, consulting, engineering, financial, insurance,
14 legal, management, repair, tourism, training, and
15 transportation services, not less than 50 per centum of
16 the sales or billings of which is provided by United
17 States citizens or is otherwise attributable to the
18 United States;

19 (4) the term "export trade services" includes, but
20 is not limited to, consulting, international market re-
21 search, advertising, marketing, insurance, product re-
22 search and design, legal assistance, transportation, in-
23 cluding trade documentation and freight forwarding,
24 communication and processing of foreign orders to and
25 for exporters and foreign purchasers, warehousing, for-

1 eign exchange, and financing when provided in order to
2 facilitate the export of goods or services produced in
3 the United States;

4 (5) the term “export trading company” means a
5 company which does business under the laws of the
6 United States or any State and which is organized and
7 operated principally for the purposes of—

8 (A) exporting goods or services produced in
9 the United States; and

10 (B) facilitating the exportation of goods and
11 services produced in the United States by unaffil-
12 iated persons by providing one or more export
13 trade services;

14 (6) the term “United States” means the several
15 States of the United States, the District of Columbia,
16 the Commonwealth of Puerto Rico, the Virgin Islands,
17 American Samoa, Guam, the Commonwealth of the
18 Northern Mariana Islands, and the Trust Territory of
19 the Pacific Islands;

20 (7) the term “Secretary” means the Secretary of
21 Commerce; and

22 (8) the term “company” means any corporation,
23 partnership, association, or similar organization.

24 (b) The Secretary is authorized, by regulation, to further
25 define such terms consistent with this section.

1 FUNCTIONS OF THE SECRETARY OF COMMERCE

2 SEC. 104. The Secretary shall promote and encourage
3 the formation and operation of export trading companies by
4 providing information and advice to interested persons and by
5 facilitating contact between producers of exportable goods
6 and services and firms offering export trade services.

7 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
8 BANK HOLDING COMPANIES, AND INTERNATIONAL
9 BANKING CORPORATIONS

10 SEC. 105. (a) For the purpose of this section—

11 (1) the term “banking organization” means any
12 State bank, national bank, Federal savings bank, bank-
13 ers’ bank, bank holding company, Edge Act Corpora-
14 tion, or Agreement Corporation;

15 (2) the term “State bank” means any bank which
16 is incorporated under the laws of any State, any terri-
17 tory of the United States, the Commonwealth of
18 Puerto Rico, Guam, American Samoa, the Common-
19 wealth of the Northern Mariana Islands, or the Virgin
20 Islands, or any bank (except a national bank) which is
21 operating under the Code of Law for the District of
22 Columbia (hereinafter referred to as a “District bank”);

23 (3) the term “State member bank” means any
24 State bank, including a bankers’ bank, which is a
25 member of the Federal Reserve System;

1 (4) the term "State nonmember insured bank"
2 means any State bank, including a bankers' bank,
3 which is not a member of the Federal Reserve System,
4 but the deposits of which are insured by the Federal
5 Deposit Insurance Corporation;

6 (5) the term "bankers' bank" means any bank
7 which (A) is organized solely to do business with other
8 financial institutions, (B) is owned primarily by the fi-
9 nancial institutions with which it does business, and (C)
10 does not do business with the general public;

11 (6) the term "bank holding company" has the
12 same meaning as in the Bank Holding Company Act of
13 1956;

14 (7) the term "Edge Act Corporation" means a
15 corporation organized under section 25(a) of the Fed-
16 eral Reserve Act;

17 (8) the term "Agreement Corporation" means a
18 corporation operating subject to section 25 of the Fed-
19 eral Reserve Act;

20 (9) the term "appropriate Federal banking
21 agency" means—

22 (A) the Comptroller of the Currency with re-
23 spect to a national bank or any District bank;

24 (B) the Board of Governors of the Federal
25 Reserve System with respect to a State member

1 bank, bank holding company, Edge Act Corpora-
2 tion, or Agreement Corporation;

3 (C) the Federal Deposit Insurance Corpora-
4 tion with respect to a State nonmember insured
5 bank except a District bank; and

6 (D) the Federal Home Loan Bank Board
7 with respect to a Federal savings bank.

8 In any situation where the banking organization hold-
9 ing or making an investment in an export trading com-
10 pany is a subsidiary of another banking organization
11 which is subject to the jurisdiction of another agency,
12 and some form of agency approval or notification is re-
13 quired, such approval or notification need only be ob-
14 tained from or made to, as the case may be, the appro-
15 priate Federal banking agency for the banking organi-
16 zation making or holding the investment in the export
17 trading company;

18 (10) the term "capital and surplus" means paid in
19 and unimpaired capital and surplus, and includes un-
20 divided profits and such other items as the appropriate
21 Federal banking agency may deem appropriate;

22 (11) an "affiliate" of a banking organization or
23 export trading company is a person who controls, is
24 controlled by, or is under common control with such
25 banking organization or export trading company;

(12) the terms “control” and “subsidiary” shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms “controlled” and “controlling” shall be construed consistently with the term “control” as defined in section 2 of the Bank Holding Company Act of 1956; and

(13) the term “export trading company” has the same meaning as in section 103(5) of this Act, or means any company organized and operating principally for the purpose of providing export trade services, as defined in section 103(4) of this Act.

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any other law, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of \$10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal

banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of \$10,000,000 in one or more export trading companies, or make any investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization or which will cause more than 50 per centum of the voting stock of an export trading company to be owned or controlled by banking organizations, only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of clause (A) of the preceding sentence shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines, after notice and opportunity for hearing, that the export trading company is a subsidiary of the investing banking organization, it shall have authority to disapprove the investment or impose conditions on such investment under authority of subsection (d). In furtherance of such authority, the appropriate Federal banking agency may require divesti-

1 ture of any voting stock or other evidences of ownership pre-
2 viously acquired, and may impose conditions necessary for
3 the termination of any controlling relationship.

4 (2) If a banking organization proposes to make any in-
5 vestment or engage in any activity included within the fol-
6 lowing two subparagraphs, it must give the appropriate Fed-
7 eral banking agency sixty days prior written notice before it
8 makes such investment or engages in such activity:

9 (A) any additional investment in an export trading
10 company subsidiary; or

11 (B) the engagement by any export trading
12 company subsidiary in any line of activity, including
13 specifically the taking of title to goods, wares, mer-
14 chandise, or commodities, if such activity was not dis-
15 closed in any prior application for approval.

16 During the notification period provided under this paragraph,
17 the appropriate Federal banking agency may, by written
18 notice, disapprove the proposed investment or activity or
19 impose conditions on such investment or activity under au-
20 thority of subsection (d). An additional investment or activity
21 covered by this paragraph may be made or engaged in, as the
22 case may be, prior to the expiration of the notification period
23 if the appropriate Federal banking agency issues written
24 notice of its intent not to disapprove.

1 (3) In the event of the failure of the appropriate Federal
2 banking agency to act on any application for approval under
3 paragraph (1)(B) of this subsection within the ninety-day
4 period which begins on the date the application has been ac-
5 cepted for processing by the appropriate Federal banking
6 agency, the application shall be deemed to have been
7 granted. In the event of the failure of the appropriate Federal
8 banking agency either to disapprove or to impose conditions
9 on any investment or activity subject to the prior notification
10 requirements of paragraph (2) of this subsection within the
11 sixty-day period provided therein, such period beginning on
12 the date the notification has been received by the appropriate
13 Federal banking agency, such investment or activity may be
14 made or engaged in, as the case may be, any time after the
15 expiration of such period.

16 (c) The following limitations apply to export trading
17 companies and the investments in such companies by banking
18 organizations:

19 (1) The name of any export trading company shall
20 not be similar in any respect to that of a banking orga-
21 nization that owns any of its voting stock or other evi-
22 dences of ownership.

23 (2) The total historical cost of the direct and indi-
24 rect investments by a banking organization in an
25 export trading company combined with extensions of

1 credit by the banking organization and its direct and
2 indirect subsidiaries to such export trading company
3 shall not exceed 10 per centum of the banking organi-
4 zation's capital and surplus.

5 (3) A banking organization that owns any voting
6 stock or other evidences of ownership of an export
7 trading company shall terminate its ownership of such
8 stock if the export trading company takes positions in
9 commodities or commodities contracts other than as
10 may be necessary in the course of its business oper-
11 ations.

12 (4) No banking organization holding voting stock
13 or other evidences of ownership of any export trading
14 company may extend credit or cause any affiliate to
15 extend credit to any export trading company or to cus-
16 tomers of such company on terms more favorable than
17 those afforded similar borrowers in similar circum-
18 stances, and such extension of credit shall not involve
19 more than the normal risk of repayment or present
20 other unfavorable features.

21 (d)(1) In the case of every application under subsection
22 (b)(1)(B) of this section, the appropriate Federal banking
23 agency shall take into consideration the financial and man-
24 agerial resources, competitive situation, and future prospects
25 of the banking organization and export trading company con-

1 cerned, and the benefits of the proposal to United States
2 business, industrial, and agricultural concerns, and to improv-
3 ing United States competitiveness in world markets. The
4 appropriate Federal banking agency may not approve any
5 investment for which an application has been filed under
6 subsection (b)(1)(B) if it finds that the export benefits of such
7 proposal are outweighed in the public interest by any adverse
8 financial, managerial, competitive, or other banking factors
9 associated with the particular investment. Any disapproval
10 order issued under this section must contain a statement of
11 the reasons for disapproval.

12 (2) In approving any application submitted under sub-
13 section (b)(1)(B), the appropriate Federal banking agency
14 may impose such conditions which, under the circumstances
15 of such case, it may deem necessary (A) to limit a banking
16 organization's financial exposure to an export trading com-
17 pany, or (B) to prevent possible conflicts of interest or unsafe
18 or unsound banking practices. With respect to the taking of
19 title to goods, wares, merchandise, or commodities by any
20 export trading company subsidiary of a banking organization,
21 the appropriate Federal banking agencies shall establish
22 standards designed to ensure against any unsafe or unsound
23 practices that could adversely affect a controlling banking or-
24 ganization investor, including specifically practices pertaining
25 to an export trading company subsidiary's holding of title to

1 inventory. Such standards should be established no later than
2 two hundred and seventy days after enactment of this Act,
3 and opportunity should be provided for public comment and
4 participation in developing such standards. If an export trad-
5 ing company subsidiary of a banking organization proposes to
6 take title to goods, wares, merchandise, or commodities in a
7 manner which does not conform to such standards, or prior to
8 the establishment of such standards, it may only do so with
9 the prior approval of the appropriate Federal banking agency
10 and subject to such conditions and limitations as it may
11 impose under this paragraph.

12 (3) In determining whether to impose any condition
13 under the preceding paragraph (2), or in imposing such condi-
14 tion, the appropriate Federal banking agency must give due
15 consideration to the size of the banking organization and
16 export trading company involved, the degree of investment
17 and other support to be provided by the banking organization
18 to the export trading company, and the identity, character,
19 and financial strength of any other investors in the export
20 trading company. The appropriate Federal banking agency
21 shall not impose any conditions or set standards for the
22 taking of title which unnecessarily disadvantage, restrict, or
23 limit export trading companies in competing in world markets
24 or in achieving the purposes of section 102 of this Act. In
25 particular, in setting standards for the taking of title under

1 the preceding paragraph (2), the appropriate Federal banking
2 agencies shall give special weight to the need to take title in
3 certain kinds of trade transactions, such as international
4 barter transactions.

5 (4) Notwithstanding any other provision of this Act, the
6 appropriate Federal banking agency may, whenever it has
7 reasonable cause to believe that the ownership or control of
8 any investment in an export trading company constitutes a
9 serious risk to the financial safety, soundness, or stability of
10 the banking organization and is inconsistent with sound bank-
11 ing principles or with the purposes of this Act or with the
12 Financial Institutions Supervisory Act of 1966, order the
13 banking organization, after due notice and opportunity for
14 hearing, to terminate (within one hundred and twenty days or
15 such longer period as the Board may direct in unusual cir-
16 cumstances) its investment in the export trading company.

17 (5) On or before two years after enactment of this Act,
18 the appropriate Federal banking agencies shall jointly report
19 to the Committee on Banking, Housing, and Urban Affairs of
20 the Senate and the Committee on Banking, Finance and
21 Urban Affairs of the House of Representatives their recom-
22 mendations with respect to the implementation of this sec-
23 tion, their recommendations on any changes in United States
24 law to facilitate the financing of United States exports, espe-
25 cially by smaller and medium-sized business concerns, and

1 their recommendations on the effects of ownership of United
2 States banks by foreign banking organizations affiliated with
3 trading companies doing business in the United States.

4 (e)(1) Any party aggrieved by an order of an appropriate
5 Federal banking agency under this section may obtain a
6 review of such order in the United States court of appeals
7 within any circuit wherein such organization has its principal
8 place of business, or in the court of appeals for the District of
9 Columbia Circuit, by filing a notice of appeal in such court
10 within thirty days from the date of such order, and simulta-
11 neously sending a copy of such notice by registered or certi-
12 fied mail to the appropriate Federal banking agency. The ap-
13 propriate Federal banking agency shall promptly certify and
14 file in such court the record upon which the order was based.
15 The court shall set aside any order found to be (A) arbitrary,
16 capricious, an abuse of discretion, or otherwise not in accord-
17 ance with law; (B) contrary to constitutional right, power,
18 privilege, or immunity; or, (C) in excess of statutory jurisdic-
19 tion, authority, or limitations, or short of statutory right; or
20 (D) without observance of procedure required by law. Except
21 for violations of subsection (b)(3) of this section, the court
22 shall remand for further consideration by the appropriate
23 Federal banking agency any order set aside solely for proce-
24 dural errors and may remand for further consideration by the
25 appropriate Federal banking agency any order set aside for

1 substantive errors. Upon remand, the appropriate Federal
2 banking agency shall have no more than sixty days from date
3 of issuance of the court's order to cure any procedural error
4 or reconsider its prior order. If the agency fails to act within
5 this period, the application or other matter subject to review
6 shall be deemed to have been granted as a matter of law.

7 (f)(1) The appropriate Federal banking agencies are au-
8 thorized and empowered to issue such rules, regulations, and
9 orders, to require such reports, to delegate such functions,
10 and to conduct such examinations of subsidiary export trad-
11 ing companies, as each of them may deem necessary in order
12 to perform their respective duties and functions under this
13 section and to administer and carry out the provisions and
14 purposes of this section and prevent evasions thereof.

15 (2) In addition to any powers, remedies, or sanctions
16 otherwise provided by law, compliance with the requirements
17 imposed under this section may be enforced under section 8
18 of the Federal Deposit Insurance Act by any appropriate
19 Federal banking agency defined in that Act.

20 INITIAL INVESTMENTS AND OPERATING EXPENSES

21 SEC. 106. (a) The Economic Development Administra-
22 tion and the Small Business Administration are directed, in
23 their consideration of applications by export trading compa-
24 nies for loans and guarantees, including applications to make
25 new investments related to the export of goods or services

1 produced in the United States and to meet operating ex-
2 penses, to give special weight to export-related benefits, in-
3 cluding opening new markets for United States goods and
4 services abroad and encouraging the involvement of small- or
5 medium-size businesses or agricultural concerns in the export
6 market.

7 (b) There are authorized to be appropriated as necessary
8 to meet the purposes of this section, \$20,000,000 for each
9 fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts
10 appropriated pursuant to the authority of this subsection shall
11 be in addition to amounts appropriated under the authority of
12 other Acts.

13 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
14 INVENTORY

15 SEC. 107. The Export-Import Bank of the United
16 States is authorized and directed to establish a program to
17 provide guarantees for loans extended by financial institu-
18 tions or other private creditors to export trading companies
19 as defined in section 103(5) of this Act, or to other exporters,
20 when such loans are secured by export accounts receivable or
21 inventories of exportable goods, and when in the judgment of
22 the Board of Directors—

23 (1) the private credit market is not providing ade-
24 quate financing to enable otherwise creditworthy

1 export trading companies or exporters to consummate
2 export transactions; and

3 (2) such guarantees would facilitate expansion of
4 exports which would not otherwise occur.

5 Guarantees provided under the authority of this section shall
6 be subject to limitations contained in annual appropriations
7 Acts.

8 TITLE II—EXPORT TRADE ASSOCIATIONS

9 SHORT TITLE

10 SEC. 201. This title may be cited as the “Export Trade
11 Association Act of 1980”.

12 FINDINGS; DECLARATION OF PURPOSE

13 SEC. 202. (a) FINDINGS.—The Congress finds and de-
14 clares that—

15 (1) the exports of the American economy are re-
16 sponsible for creating and maintaining one out of every
17 nine manufacturing jobs in the United States and for
18 generating one out of every \$7 of total United States
19 goods produced;

20 (2) exports will play an even larger role in the
21 United States economy in the future in the face of
22 severe competition from foreign government-owned and
23 subsidized commercial entities;

1 (3) between 1968 and 1977 the United States
2 share of total world exports fell from 19 per centum to
3 13 per centum;

4 (4) trade deficits contribute to the decline of the
5 dollar on international currency markets, fueling infla-
6 tion at home;

7 (5) service-related industries are vital to the well-
8 being of the American economy inasmuch as they
9 create jobs for seven out of every ten Americans, pro-
10 vide 65 per centum of the Nation's gross national
11 product, and represent a small but rapidly rising per-
12 centage of United States international trade;

13 (6) small and medium-sized firms are prime bene-
14 ficiaries of joint exporting, through pooling of technical
15 expertise, help in achieving economies of scale, and as-
16 sistance in competing effectively in foreign markets;
17 and

18 (7) the Department of Commerce has as one of its
19 responsibilities the development and promotion of
20 United States exports.

21 (b) PURPOSE.—It is the purpose of this Act to encour-
22 age American exports by establishing an office within the
23 Department of Commerce to encourage and promote the for-
24 mation of export trade associations through the Webb-
25 Pomerene Act, by making the provisions of that Act explic-

1 itly applicable to the exportation of services, and by transfer-
2 ring the responsibility for administering that Act from the
3 Federal Trade Commission to the Secretary of Commerce.

4 DEFINITIONS

5 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61-66)
6 is amended by striking out the first section (15 U.S.C. 61)
7 and inserting in lieu thereof the following:

8 "SECTION 1. DEFINITIONS.

9 "As used in this Act—

10 "(1) EXPORT TRADE.—The term 'export trade'
11 means trade or commerce in goods, wares, merchan-
12 dise, or services exported, or in the course of being ex-
13 ported from the United States or any territory thereof
14 to any foreign nation.

15 "(2) SERVICE.—The term 'service' means intangi-
16 ble economic output, including, but not limited to—

17 "(A) business, repair, and amusement
18 services;

19 "(B) management, legal, engineering, archi-
20 tectural, and other professional services; and

21 "(C) financial, insurance, transportation, and
22 communication services.

23 "(3) EXPORT TRADE ACTIVITIES.—The term
24 'export trade activities' includes activities or agree-
25 ments in the course of export trade.

1 “(4) TRADE WITHIN THE UNITED STATES.—The
2 term ‘trade within the United States’ whenever used in
3 this Act means trade or commerce among the several
4 States or in any territory of the United States, or in
5 the District of Columbia, or between any such territory
6 and another, or between any such territory or territo-
7 ries and any State or States or the District of Colum-
8 bia, or between the District of Columbia and any State
9 or States.

10 “(5) ASSOCIATION.—The term ‘association’
11 means any combination, by contract or other arrange-
12 ment, of persons who are citizens of the United States,
13 partnerships which are created under and exist pursu-
14 ant to the laws of any State or of the United States, or
15 corporations which are created under and exist pursu-
16 ant to the laws of any State or of the United States.

17 “(6) EXPORT TRADING COMPANY.—The term
18 ‘export trading company’ means an export trading
19 company as defined in section 103(5) of the Export
20 Trading Company Act of 1980.

21 “(7) ANTITRUST LAWS.—The term ‘antitrust
22 laws’ means the antitrust laws defined in the first sec-
23 tion of the Clayton Act (15 U.S.C. 12) and section 4
24 of the Federal Trade Commission Act (15 U.S.C. 44),
25 and any State antitrust or unfair competition law.

1 “(8) SECRETARY.—The term ‘Secretary’ means
2 the Secretary of Commerce.

3 “(9) ATTORNEY GENERAL.—The term ‘Attorney
4 General’ means the Attorney General of the United
5 States.

6 “(10) COMMISSION.—The term ‘Commission’
7 means the Federal Trade Commission.”.

8 ANTITRUST EXEMPTION

9 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66)
10 is amended by striking out section 2 (15 U.S.C. 62) and in-
11 serting in lieu thereof the following:

12 **“SEC. 2. EXEMPTION FROM ANTITRUST LAWS.**

13 “(a) ELIGIBILITY.—The export trade, export trade ac-
14 tivities, and methods of operation of any association, entered
15 into for the sole purpose of engaging in export trade, and
16 engaged in or proposed to be engaged in such export trade,
17 and the export trade and methods of operation of any export
18 trading company, that—

19 “(1) serve to preserve or promote export trade;

20 “(2) result in neither a substantial lessening of
21 competition or restraint of trade within the United
22 States nor a substantial restraint of the export trade of
23 any competitor of such association;

24 “(3) do not unreasonably enhance, stabilize, or de-
25 press prices within the United States of the goods,

1 wares, merchandise, or services of the class exported
2 by such association;

3 “(4) do not constitute unfair methods of competi-
4 tion against competitors engaged in the export trade of
5 goods, wares, merchandise, or services of the class ex-
6 ported by such association;

7 “(5) do not include any act which results, or may
8 reasonably be expected to result, in the sale for con-
9 sumption or resale within the United States of the
10 goods, wares, merchandise, or services exported by the
11 association or export trading company or its members;
12 and

13 “(6) do not constitute trade or commerce in the
14 licensing of patents, technology, trademarks, or know-
15 how, except as incidental to the sale of the goods,
16 wares, merchandise, or services exported by the associ-
17 ation or export trading company or its members

18 shall, when certified according to the procedures set forth in
19 this Act, be eligible for the exemption provided in subsection
20 (b).

21 “(b) EXEMPTION.—An association or an export trading
22 company and its members with respect to its export trade,
23 export trade activities and methods of operation are exempt
24 from the operation of the antitrust laws as relates to their
25 respective export trade, export trade activities or methods of

1 operation that are specified in a certificate issued according
2 to the procedures set forth in the Act, carried out in conform-
3 ity with the provisions, terms, and conditions prescribed in
4 such certificate and engaged in during the period in which
5 such certificate is in effect. The subsequent revocation or in-
6 validation of such certificate shall not render the association
7 or its members or an export trading company or its members,
8 liable under the antitrust laws for such trade, export trade
9 activities, or methods of operation engaged in during such
10 period.

11 “(c) DISAGREEMENT OF ATTORNEY GENERAL OR
12 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
13 Act, the Attorney General or Commission has formally ad-
14 vised the Secretary of disagreement with his determination to
15 issue a proposed certificate, and the Secretary has nonethe-
16 less issued such proposed certificate or an amended certifi-
17 cate, the exemption provided by this section shall not be
18 effective until thirty days after the issuance of such
19 certificate.”.

20 AMENDMENT OF SECTION 3

21 SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The
22 Webb-Pomerene Act (15 U.S.C. 61–66) is amended—

23 (1) by inserting immediately before section 3 (15
24 U.S.C. 63) the following:

1 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
2 ATIONS PERMITTED.",

3 (2) by striking out "SEC. 3. That nothing" in sec-
4 tion 3 and inserting in lieu thereof "Nothing".

5 ADMINISTRATION: ENFORCEMENT: REPORTS

6 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
7 (15 U.S.C. 61-66) is amended by striking out sections 4 and
8 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
9 following sections:

10 "SEC. 4. CERTIFICATION.

11 "(a) PROCEDURE FOR APPLICATION.—Any associ-
12 ation, company, or export trading company seeking certifica-
13 tion under this Act shall file with the Secretary a written
14 application for certification setting forth the following:

15 "(1) The name of the association or export trad-
16 ing company.

17 "(2) The location of all of the offices or places of
18 business of the association or export trading company
19 in the United States and abroad.

20 "(3) The names and addresses of all of the offi-
21 cers, stockholders, and members of the association or
22 export trading company.

23 "(4) A copy of the certificate or articles of incor-
24 poration and bylaws, if the association or export trad-
25 ing company is a corporation; or a copy of the articles,
26 partnership, joint venture, or other agreement or con-

1 tions to be imposed upon members of the association or
2 export trading company.

3 “(8) The names of all countries where export
4 trade in the described goods, wares, merchandise, or
5 services is conducted or proposed to be conducted by
6 or through the association or export trading company.

7 “(9) Any other information which the Secretary
8 may request concerning the organization, operation,
9 management, or finances of the association or export
10 trading company; the relation of the association or
11 export trading company to other associations, corpora-
12 tions, partnerships, and individuals; and competition or
13 potential competition, and effects of the association or
14 export trading company thereon. The Secretary may
15 request such information as part of an initial applica-
16 tion or as a necessary supplement thereto. The Secre-
17 tary may not request information under this paragraph
18 which is not reasonably available to the person making
19 application or which is not necessary for certification of
20 the prospective association or export trading company.

21 “(b) ISSUANCE OF CERTIFICATE.—

22 “(1) NINETY-DAY PERIOD.—The Secretary shall
23 issue a certificate to an association or export trading
24 company within ninety days after receiving the applica-
25 tion for certification or necessary supplement thereto if

1 the Secretary, after consultation with the Attorney
2 General and Commission, determines that the associ-
3 ation, its export trade, export trade activities and
4 methods of operation, or export trading company, and
5 its export trade, export trade activities and methods of
6 operation meet the requirements of section 2 of this
7 Act and that the association or export trading company
8 and its activities will serve a specified need in promot-
9 ing the export trade of the goods, wares, merchandise,
10 or services described in the application for certification.
11 The certificate shall specify the permissible export
12 trade, export trade activities and methods of operation
13 of the association or export trading company and shall
14 include any terms and conditions the Secretary deems
15 necessary to comply with the requirements of section 2
16 of this Act. The Secretary shall deliver to the Attorney
17 General and the Commission a copy of any certificate
18 that he proposes to issue. The Attorney General or
19 Commission may, within fifteen days thereafter, give
20 written notice to the Secretary of an intent to offer
21 advice on the determination. The Attorney General or
22 Commission may, after giving such written notice and
23 within forty-five days of the time the Secretary has de-
24 livered a copy of a proposed certificate, formally advise
25 the Secretary of disagreement with his determination.

1 The Secretary shall not issue any certificate prior to
2 the expiration of such forty-five-day period unless he
3 has (A) received no notice of intent to offer advice by
4 the Attorney General or the Commission within fifteen
5 days after delivering a copy of a proposed certificate,
6 or (B) received any notice and formal advice of dis-
7 agreement or written confirmation that no formal dis-
8 agreement will be transmitted from the Attorney Gen-
9 eral and the Commission. After the forty-five-day
10 period or, if no notice of intent to offer advice has been
11 given, after the fifteen-day period, the Secretary shall
12 either issue the proposed certificate, issue an amended
13 certificate, or deny the application. Upon agreement of
14 the applicant, the Secretary may delay taking action
15 for not more than thirty additional days after the forty-
16 five-day period. Before offering advice on a proposed
17 certification, the Attorney General and Commission
18 shall consult in an effort to avoid, wherever possible,
19 having both agencies offer advice on any application.

20 “(2) EXPEDITED CERTIFICATION.—In those in-
21 stances where the temporary nature of the export trade
22 activities, deadlines for bidding on contracts or filling
23 orders, or any other circumstances beyond the control
24 of the association or export trading company which
25 have a significant impact on its export trade, make the

1 ninety-day period for application approval described in
2 paragraph (1) of this subsection, or an amended appli-
3 cation approval as provided in subsection (c) of this
4 section, impractical for the association or export trad-
5 ing company seeking certification, such association or
6 export trading company may request and may receive
7 expedited action on its application for certification.

8 “(3) APPEAL OF DETERMINATION.—If the Secre-
9 tary determines not to issue a certificate to an associ-
10 ation or export trading company which has submitted
11 an application or an amended application for certifica-
12 tion, then he shall—

13 “(A) notify the association or export trading
14 company of his determination and the reasons for
15 his determination, and

16 “(B) upon request made by the association or
17 export trading company afford it an opportunity
18 for a hearing with respect to that determination in
19 accordance with section 557 of title 5, United
20 States Code.

21 “(c) MATERIAL CHANGES IN CIRCUMSTANCES;
22 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
23 terial change in the membership, export trade, export trade
24 activities, or methods of operation, of an association or export
25 trading company then it shall report such change to the Sec-

1 retary and may apply to the Secretary for an amendment of
 2 its certificate. Any application for an amendment to a certifi-
 3 cate shall set forth the requested amendment of the certifi-
 4 cate and the reasons for the requested amendment. Any re-
 5 quest for the amendment of a certificate shall be treated in
 6 the same manner as an original application for a certificate.
 7 If the request is filed within thirty days after a material
 8 change which requires the amendment, and if the requested
 9 amendment is approved, then there shall be no interruption in
 10 the period for which the certificate is in effect.

11 “(d) AMENDMENT OR REVOCATION OF CERTIFICATE
 12 BY SECRETARY.—After notifying the association or export
 13 trading company involved and after an opportunity for hear-
 14 ing pursuant to section 554 of title 5, United States Code,
 15 the Secretary, on his own initiative—

16 “(1) may require that the organization or oper-
 17 ation of the association or export trading company be
 18 modified to correspond with its certification, or

19 “(2) shall, upon a determination that the export
 20 trade, export trade activities or methods of operation of
 21 the association or export trading company no longer
 22 meet the requirements of section 2 of this Act, revoke
 23 the certificate or make such amendments as may be
 24 necessary to satisfy the requirements of such section.

1 “(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
2 ATTORNEY GENERAL OR CHAIRMAN.—

3 “(1) The Attorney General or the Commission
4 may bring an action against an association or export
5 trading company or its members to invalidate, in whole
6 or in part, the certification on the ground that the
7 export trade, export trade activities or methods of op-
8 eration of the association or export trading company
9 fail or have failed, to meet the requirements of section
10 2 of this Act. The Attorney General or Commission
11 shall notify any association or export trading company
12 or member thereof, against which it intends to bring an
13 action for revocation, thirty days in advance, as to its
14 intent to file an action under this subsection. The dis-
15 trict court shall consider any issues presented in any
16 such action de novo and if it finds that the require-
17 ments of section 2 are not met, it shall issue an order
18 declaring the certificate invalid and any other order
19 necessary to effectuate the purposes of this Act and
20 the requirements of section 2.

21 “(2) Any action brought under this subsection
22 shall be considered an action described in section 1337
23 of title 28, United States Code. Pending any such
24 action which was brought during the period any ex-
25 emption is held in abeyance pursuant to section 2(c) of

1 this Act, the court may make such temporary restrain-
2 ing order or prohibition as shall be deemed just in the
3 premises.

4 “(3) No person other than the Attorney General
5 or Commission shall have standing to bring an action
6 against an association or export trading company or
7 their respective members for failure of the association
8 or export trading company or their respective export
9 trade, export trade activities or methods of operation to
10 meet the criteria of section 2 of this Act.

11 **“SEC. 5. GUIDELINES.**

12 “(a) INITIAL PROPOSED GUIDELINES.—Within ninety
13 days after the enactment of the Export Trade Association
14 Act of 1980, the Secretary, after consultation with the Attor-
15 ney General, and the Commission shall publish proposed
16 guidelines for purposes of determining whether export trade,
17 export trade activities and methods of operation of an associ-
18 ation or export trading company will meet the requirements
19 of section 2 of this Act.

20 “(b) PUBLIC COMMENT PERIOD.—Following publica-
21 tion of the proposed guidelines, and any proposed revision of
22 guidelines, interested parties shall have thirty days to com-
23 ment on the proposed guidelines. The Secretary shall review
24 the comments and, after consultation with the Attorney Gen-
25 eral, and Commission, publish final guidelines within thirty

1 days after the last day on which comments may be made
2 under the preceding sentence.

3 “(c) PERIODIC REVISION.—After publication of the
4 final guidelines, the Secretary shall periodically review the
5 guidelines and, after consultation with the Attorney General,
6 and the Commission, propose revisions as needed.

7 “(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
8 ACT.—The promulgation of guidelines under this section
9 shall not be considered rulemaking for purposes of subchapter
10 II of chapter 5 of title 5, United States Code, and section
11 553 of such title shall not apply to their promulgation.

12 “SEC. 6. ANNUAL REPORTS.

13 “Every certified association or export trading company
14 shall submit to the Secretary an annual report, in such form
15 and at such time as he may require, which report updates
16 where necessary the information described by section 4(a) of
17 this Act.

18 “SEC. 7. OFFICE OF EXPORT TRADE IN COMMERCE
19 DEPARTMENT.

20 “The Secretary shall establish within the Department of
21 Commerce an office to promote and encourage to the great-
22 est extent feasible the formation of export trade associations
23 and export trading companies through the use of provisions of
24 this Act in a manner consistent with this Act.

1 **"SEC. 8. AUTOMATIC CERTIFICATION FOR EXISTING**
2 **ASSOCIATIONS.**

3 "The Secretary shall certify any export trade associ-
4 ation registered with the Federal Trade Commission as of
5 April 3, 1980, if such association, within one hundred and
6 eighty days after the date of enactment of such Act, files with
7 the Secretary an application for certification as provided for
8 in section 5 of this Act, unless such application shows on its
9 face that the association is not eligible for certification under
10 this Act.

11 **"SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL**
12 **REPORT INFORMATION.**

13 "(a) GENERAL RULE.—Portions of applications made
14 under section 4, including amendments to such applications,
15 and annual reports made under section 6 that contain trade
16 secrets or confidential business or financial information, the
17 disclosure of which would harm the competitive position of
18 the person submitting such information shall be confidential,
19 and, except as authorized by this section, no officer or em-
20 ployee, or former officer or employee, of the United States
21 shall disclose any such confidential information, obtained by
22 him in any manner in connection with his service as such an
23 officer or employee.

24 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
25 MISSION.—Whenever the Secretary believes that an appli-
26 cant may be eligible for a certificate, or has issued a certifi-

1 cate to an association or export trading company, he shall
2 promptly make available all materials filed by the applicant,
3 association or export trading company, including applications
4 and supplements thereto, reports of material changes, appli-
5 cations for amendments and annual reports, and information
6 derived therefrom. The Secretary shall make available appli-
7 cations, amendments thereto or annual reports, or informa-
8 tion derived therefrom, to the Attorney General or Commis-
9 sion, or any employee or officer thereof, for official use in
10 connection with an investigation or judicial or administrative
11 proceeding under this Act or the antitrust laws to which the
12 United States or the Commission is or may be a party. Such
13 information may only be disclosed by the Secretary upon a
14 prior certification that the information will be maintained in
15 confidence and will only be used for such official law enforce-
16 ment purposes.

17 **“SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
18 **UNITED STATES OBLIGATIONS.**

19 “At such time as the United States undertakes binding
20 international obligations by treaty or statute, to the extent
21 that the operations of any export trade association or export
22 trading company, certified under this Act, are inconsistent
23 with such international obligations, the Secretary may re-
24 quire it to modify its operations so as to be consistent with
25 such international obligations.

1 **“SEC. 11. REGULATIONS.**

2 “The Secretary, after consultation with the Attorney
3 General and the Commission, shall promulgate such rules
4 and regulations as may be necessary to carry out the pur-
5 poses of this Act.

6 **“SEC. 12. TASK FORCE STUDY.**

7 “Seven years after the date of enactment of the Export
8 Trade Association Act of 1980, the President shall appoint,
9 by and with the advice and consent of the Senate, a task
10 force to examine the effect of the operation of this Act on
11 domestic competition and on United States international
12 trade and to recommend either continuation, revision, or ter-
13 mination of the Webb-Pomerene Act. The task force shall
14 have one year to conduct its study and to make its recom-
15 mendations to the President.”.

To establish within the Department of Commerce an office to promote and encourage the formation and utilization of export trade associations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 4 (legislative day, FEBRUARY 22), 1979

Mr. DANFORTH (for himself, Mr. BENTSEN, Mr. CHAFEE, Mr. JAVITS, and Mr. MATHIAS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish within the Department of Commerce an office to promote and encourage the formation and utilization of export trade associations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Export Trade Associ-
5 ation Act of 1979".

6 SEC. 2. FINDINGS; DECLARATION OF PURPOSE.

7 (a) FINDINGS.—The Congress finds and declares that—

1 (1) in 1978 the United States suffered the largest
2 trade deficit in its history, amounting to approximately
3 \$30,000,000,000;

4 (2) the trade deficit has contributed to the decline
5 of the dollar on international currency markets and has
6 led to widespread public concern about the strength of
7 the dollar;

8 (3) the exports of the American economy are re-
9 sponsible for creating and maintaining one out of every
10 nine manufacturing jobs in the United States and for
11 generating one out of every seven dollars of total
12 United States goods produced;

13 (4) foreign-government-owned and foreign-govern-
14 ment-subsidized entities compete directly with private
15 United States exporters for shares of the world market;

16 (5) between 1968 and 1977 the United States
17 share of total world exports fell from 19 percent to 13
18 percent;

19 (6) service-related industries are vital to the well-
20 being of the American economy inasmuch as they
21 create jobs for seven out of every ten Americans, pro-
22 vide 65 percent of the Nation's gross national product,
23 and represent a small but rapidly rising percentage of
24 United States international trade;

(7) small and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets; and

(8) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports.

(b) **PURPOSE.**—It is the purpose of this Act to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Chairman of the Federal Trade Commission to the Secretary of Commerce.

SEC. 3. DEFINITIONS.

The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out the first section and inserting in lieu thereof the following:

“SECTION 1. DEFINITIONS.

“As used in this Act—

“(1) **EXPORT TRADE.**—The term ‘export trade’ means trade or commerce in goods, wares, merchan-

1 dise, or services exported, or in the course of being ex-
2 ported from the United States or any territory thereof
3 to any foreign nation.

4 “(2) SERVICE.—The term ‘service’ means intangi-
5 ble economic output, including, but not limited to—

6 “(A) business, repair, and amusement serv-
7 ices;

8 “(B) management, legal, engineering, archi-
9 tectural, and other professional services; and

10 “(C) financial, insurance, transportation, and
11 communication services.

12 “(3) EXPORT TRADE ACTIVITIES.—The term
13 ‘export trade activities’ includes any activities or
14 agreements which are incidental to export trade.

15 “(4) TRADE WITHIN THE UNITED STATES.—The
16 term ‘trade within the United States’ means trade be-
17 tween or among—

18 “(A) the several States of the United States,

19 “(B) the territories of the United States, or

20 “(C) the District of Columbia and the several
21 States or Territories of the United States.

22 “(5) ASSOCIATION.—The term ‘association’
23 means any combination, by contract or other arrange-
24 ment, of persons who are citizens of the United States,
25 partnerships which are created under and exist pursu-

ant to the laws of any State or of the United States, or corporations which are created under and exist pursuant to the laws of any State or of the United States. The term 'association' does not include a combination of any of the above with a subsidiary located in the United States which is controlled by a foreign entity.

"(6) ANTITRUST LAWS.—The term 'antitrust laws' means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12) and section 4 of the Federal Trade Commission Act (15 U.S.C. 44), any other law of the United States in pari materia with those laws, and any State antitrust or unfair competition law.

"(7) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(8) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(9) CHAIRMAN.—The term 'Chairman' means the Chairman of the Federal Trade Commission."

SEC. 4. ANTITRUST EXEMPTION.

Section 2 of the Webb-Pomerene Act (15 U.S.C. 62) is amended to read as follows:

1 "SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

2 “(a) GENERAL RULE.—Any association certified ac-
3 cording to the procedures set forth in this Act, entered into
4 for the sole purpose of engaging in export trade, and engaged
5 in such export trade, is exempt from the application of the
6 antitrust laws if the association and the export trade activi-
7 ties in which it and its members are engaged or propose to be
8 engaged—

9 “(1) serve to preserve or promote export trade;

10 “(2) result in neither a substantial restraint of
11 competition within the United States nor a substantial
12 restraint of the export trade of any domestic competitor
13 of such association;

14 “(3) do not unreasonably enhance, stabilize, or de-
15 press prices within the United States of the goods,
16 wares, merchandise, or services of the class exported
17 by such association;

18 “(4) do not constitute unfair methods of competi-
19 tion against domestic competitors engaged in the
20 export trade of goods, wares, merchandise, or services
21 of the class exported by such association;

22 “(5) do not include any act which results, or may
23 reasonably be expected to result, in the sale for con-
24 sumption or resale within the United States of the
25 goods, wares, merchandise, or services exported by the
26 association or its members.

1 “(6) do not constitute trade or commerce in the
2 licensing of patents, technology, trademarks, or know-
3 how, except as incidental to the sale of the goods,
4 wares, merchandise, or services exported by the associ-
5 ation or its members.

6 “(b) ENFORCEMENT BY FEDERAL AGENCIES ONLY.—

7 “(1) STANDING.—No person other than a depart-
8 ment or agency of the United States, or an officer of
9 the United States acting in his official capacity, shall
10 have standing to bring an action against an association
11 for failure to meet the requirements of subsection (a).

12 “(2) PETITIONS BY THIRD PARTIES.—Whenever
13 any person has reason to believe that an association
14 fails to meet any requirement of subsection (a), he may
15 file a petition, alleging such failure and requesting the
16 commencement of appropriate enforcement action, with
17 the Secretary. Unless the Secretary, in consultation
18 with the Attorney General and Chairman, determines
19 that the petition does not make allegations upon which,
20 if true, an enforcement action could be based, he shall
21 conduct an adjudicatory proceeding in accordance with
22 the provisions of section 554 of title 5, United States
23 Code, for the purpose of determining the truth of the
24 matters alleged. If he determines that the allegations
25 contained in the petition are true, and that they indi-

1 (3) by inserting immediately before section 4 the
2 following:

3 "SEC. 4. UNFAIR METHODS OF COMPETITION AGAINST DO-
4 MESTIC COMPETITORS PROHIBITED.",

5 and

6 (4) by striking out "SEC. 4. That the" in section
7 4 and inserting in lieu thereof "The".

8 (b) LIMITATION OF UNFAIR COMPETITION PROHIBI-
9 TION TO DOMESTIC COMPETITORS.—Section 4 of the Act
10 (15 U.S.C. 64) is amended by inserting "domestic" before
11 "competitors".

12 SEC. 6. ADMINISTRATION; ENFORCEMENT; REPORTS.

13 (a) IN GENERAL.—The Webb-Pomerene Act is amend-
14 ed by striking out section 5 and inserting in lieu thereof the
15 following sections:

16 "SEC. 5. CERTIFICATION.

17 "(a) APPLICATION.—In order to obtain certification as
18 an association engaged solely in export trade, a person shall
19 file with the Secretary a written notice of intent to meet for
20 the purpose of determining the desirability of applying for
21 certification and, within 60 days after such meeting, unless
22 such person has filed with the Secretary a written notice or
23 decision not to apply for certification, a written application
24 for certification setting forth the following:

25 "(1) The name of the association.

1 “(2) The location of all of the association’s offices
2 or places of business in the United States and abroad.

3 “(3) The names and addresses of all of the associ-
4 ation’s officers, stockholders, and members.

5 “(4) A copy of the certificate or articles of incor-
6 poration and bylaws, if the association is a corporation;
7 or a copy of the articles or contract of association, if
8 the association is unincorporated.

9 “(5) A description of the goods, wares, merchan-
10 dise, or services which the association or its members
11 export or propose to export.

12 “(6) An explanation of the domestic and interna-
13 tional conditions, circumstances, and factors which
14 make the association useful for the purpose of promot-
15 ing the export trade of the described goods, wares,
16 merchandise, or services.

17 “(7) The methods by which the association con-
18 ducts or proposes to conduct export trade in the de-
19 scribed goods, wares, merchandise, or services, includ-
20 ing, but not limited to, any agreements to sell exclu-
21 sively to or through the association, any agreements
22 with foreign persons who may act as joint selling
23 agents, any agreements to acquire a foreign selling
24 agent, any agreements for pooling tangible or intangi-
25 ble property or resources, or any territorial, price-

1 maintenance, membership, or other restrictions to be
2 imposed upon members of the association.

3 “(8) The names of all countries where export
4 trade in the described goods, wares, merchandise, or
5 services is conducted or proposed to be conducted by
6 or through the association.

7 “(9) Any other information which the Secretary
8 may request concerning the organization, operation,
9 management, or finances of the association; the rela-
10 tion of the association to other associations, corpora-
11 tions, partnerships, and individuals; and competition or
12 potential competition, and effects of the association
13 thereon. The Secretary may not request information
14 under this paragraph which is not reasonably available
15 to the person making application or which is not neces-
16 sary for certification of the prospective association.

17 “(b) ISSUANCE OF CERTIFICATE.—

18 “(1) NINETY-DAY PERIOD.—Based upon the in-
19 formation obtained from the application, the Secretary
20 shall certify an association within 90 days after receiv-
21 ing the association’s application for certification if the
22 Secretary determines that the association and its mem-
23 bers and the proposed export trade activities meet the
24 requirements of section 2 of this Act.

“(2) EXPEDITED CERTIFICATION.—In those instances where the temporary nature of the export trade activities, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of the association which have a significant impact on the association’s export trade, make the 90-day period for application approval described in paragraph (1) of this subsection impractical for the person seeking certification as an association, such person may request and may receive expedited action on his application for certification.

“(3) APPEAL OF INITIAL DETERMINATION.—If the Secretary determines not to certify an association which has submitted an application for certification, then he shall—

“(A) notify the association of his determination and the reasons for his determination, and

“(B) upon request made by the association, afford the association an opportunity for a hearing with respect to that determination in accordance with section 557 of title 5, United States Code.

“(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF APPLICATION.—

“(1) VOIDING OF CERTIFICATION.—Whenever there is a material change in—

1 “(A) the domestic and international condi-
2 tions, circumstances, and factors which make an
3 association useful for the purpose of promoting the
4 export trade of its goods, wares, merchandise, or
5 services, or

6 “(B) the association’s membership, export
7 trade, export trade activities, or methods of oper-
8 ation which would cause the association to fail to
9 meet any requirement of section 2,

10 then the association shall apply to the Secretary for an
11 amendment of its certification. If an association fails to
12 apply for an amendment of its certification when re-
13 quired by the preceding sentence, then the certification
14 of the association shall be void as of the date of such
15 material change (as determined by the Secretary).

16 “(2) AMENDMENT OF APPLICATION.—The re-
17 quest for amendment shall be filed within 30 days after
18 the date of the material change and shall set forth the
19 requested amendment of the application and the rea-
20 sons for the requested amendment. Any request for the
21 amendment of an application shall be treated in the
22 same manner as an original application for certifica-
23 tion. If the request is filed within 30 days after the
24 material change which requires the amendment, and if
25 the requested amendment is approved, then there shall

1 be no interruption in the period for which certification
2 is in effect.

3 “(3) AMENDMENT UPON RECOMMENDATION OF
4 SECRETARY.—After notifying the association involved,
5 the Secretary may, on his own initiative, or upon the
6 recommendation of the Attorney General, the Chair-
7 man, or any other person—

8 “(A) require that an association’s certifica-
9 tion be amended,

10 “(B) require that the organization or oper-
11 ation of the association be modified to correspond
12 with the association’s certification, or

13 “(C) revoke, in whole or in part, the certifi-
14 cation of the association upon a finding (made in
15 an adjudicatory proceeding held in accordance
16 with section 554 of title 5, United States Code)
17 that the association, its members, or its export
18 trade activities do not meet the requirements of
19 section 2 of this Act.

20 “SEC. 6. GUIDELINES.

21 “(a) INITIAL PROPOSED GUIDELINES.—Within 90
22 days after the enactment of the Export Trade Association
23 Act of 1979, the Secretary, the Attorney General, and the
24 Chairman shall publish proposed guidelines for purposes of
25 determining whether an association, its members, and its

1 export trade activities will meet the requirements of section 2
2 of this Act.

3 “(b) PUBLIC COMMENT PERIOD.—Following publica-
4 tion of the proposed guidelines, and any proposed revision of
5 guidelines, interested parties shall have 30 days to comment
6 on the proposed guidelines. The Secretary, the Attorney
7 General, and the Chairman shall review the comments and
8 publish final guidelines within 30 days after the last day on
9 which comments may be made under the preceding sentence.

10 “(c) PERIODIC REVISION.—After publication of the
11 final guidelines, the Secretary, the Attorney General, and the
12 Chairman shall meet periodically to revise the guidelines as
13 needed.

14 “(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
15 ACT.—The promulgation of guidelines under this section
16 shall not be considered rule-making for purposes of sub-
17 chapter II of chapter 5 of title 5, United States Code, and
18 section 553 of such title shall not apply to their promulga-
19 tion.

20 “SEC. 7. ANNUAL REPORTS.

21 “Every certified association shall submit to the Secre-
22 tary an annual report, in such form and at such time as he
23 may require, setting forth the information described by sec-
24 tion 5(a) of this Act.

1 "SEC. 8. OFFICE OF EXPORT TRADE IN COMMERCE DEPART-
2 MENT.

3 "The Secretary shall establish within the Department of
4 Commerce an office to promote and encourage to the great-
5 est extent feasible the formation of export trade associations
6 through the use of provisions of this Act in a manner consist-
7 ent with this Act.

8 "SEC. 9. AUTOMATIC CERTIFICATION FOR EXISTING ASSOCI-
9 ATIONS.

10 "The Secretary shall certify any export trade associ-
11 ation registered with the Federal Trade Commission as of the
12 date of enactment of the Export Trade Association Act of
13 1979 if such association, within 180 days after the date of
14 enactment of such Act, files with the Secretary an applica-
15 tion for certification as provided for in section 5 of this Act,
16 unless such application shows on its face that the association
17 is not eligible for certification under this Act.

18 "SEC. 10. CONFIDENTIALITY OF APPLICATION AND ANNUAL
19 REPORT INFORMATION.

20 "(a) GENERAL RULE.—Applications made under sec-
21 tion 5, including amendments to such applications, and
22 annual reports made under section 7 shall be confidential,
23 and, except as authorized by this section, no officer or em-
24 ployee, or former officer or employee, of the United States
25 shall disclose any such application, amendment, or annual
26 report, or any application, amendment or annual report infor-

1 mation, obtained by him in any manner in connection with his
2 service as such an officer or employee.

3 “(b) DISCLOSURE TO FEDERAL OFFICERS OR EM-
4 PLOYEES FOR ADMINISTRATION OF OTHER FEDERAL
5 LAWS.—

6 “(1) INVESTIGATION.—The Secretary shall make
7 an application, amendment, or annual report, or infor-
8 mation derived therefrom available, to the extent re-
9 quired by an ex parte order issued by a judge of a
10 United States district court, to officers and employees
11 of a Federal agency personally and directly engaged in,
12 and solely for their use in, preparation for an adminis-
13 trative or judicial proceeding (or investigation which
14 may result in such a proceeding) to which the United
15 States or such agency is or may be a party.

16 “(2) APPLICATION FOR ORDER.—The head of
17 any Federal agency described in paragraph (1), or, in
18 the case of the Department of Justice, the Attorney
19 General, the Deputy Attorney General, or an Assistant
20 Attorney General, may authorize an application to a
21 United States district court judge for the order referred
22 to in paragraph (1). Upon application, the judge may
23 grant the order if he determines, on the basis of the
24 facts submitted by the applicant, that—

25 “(A) in the case of a criminal investigation—

1 “(i) there is reasonable cause to believe,
2 based upon information believed to be reli-
3 able, that a specific criminal act has been
4 committed,

5 “(ii) there is reason to believe that such
6 application, amendment, annual report, or in-
7 formation derived therefrom is probative evi-
8 dence of a matter in issue related to the
9 commission of such Act, and

10 “(iii) the information sought cannot rea-
11 sonably be obtained from any other source,
12 unless it is determined that, notwithstanding
13 the reasonable availability of the information
14 from another source, the application, amend-
15 ment or annual report, or information derived
16 therefrom sought constitutes the most proba-
17 tive evidence of a matter in issue relating to
18 the commission of such criminal act, and

19 “(B) in the case of any other investigation,
20 that—

21 “(i) such application, amendment or
22 annual report, or information derived there-
23 from is probative evidence of a matter under
24 investigation,

1 “(ii) such application, amendment or
2 annual report, or information derived there-
3 from is or may be material to the administra-
4 tive or judicial proceeding in connection with
5 which the investigation is being conducted,
6 and

7 “(iii) the information sought cannot rea-
8 sonably be obtained from any other source,
9 or, notwithstanding the reasonable availabil-
10 ity of the information from another source,
11 the application, amendment or annual report,
12 or information derived therefrom sought con-
13 stitutes the most probative evidence of a
14 matter in issue relating to the commission of
15 the act being investigated.

16 **“SEC. 11. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
17 **UNITED STATES OBLIGATIONS.**

18 “At such time as the United States undertakes interna-
19 tional obligations by treaty or statute, to the extent that the
20 operations of any export trade association, certified under
21 this Act or registered under this Act, before its amendment
22 by the Export Trade Association Act of 1979, are inconsis-
23 tent with such international obligations, the Secretary may
24 require such association to modify its operations so as to be
25 consistent with such international obligations.

1 "SEC. 12. REGULATIONS.

2 "The Secretary, in consultation with the Attorney Gen-
3 eral and the Chairman, shall promulgate such rules and regu-
4 lations as may be necessary to carry out the purposes of this
5 Act.

6 "SEC. 13. TASK FORCE STUDY.

7 "Seven years after the date of enactment of the Export
8 Trade Association Act of 1979, the President shall appoint,
9 by and with the advice and consent of the Senate, a task
10 force to examine the effect of the operation of this Act on
11 domestic competition and on the United States' international
12 trade deficit and to recommend either continuation, revision,
13 or termination of the Webb-Pomerene Act. The task force
14 shall have one year to conduct its study and to make its
15 recommendations to the President."

16 (b) REDESIGNATION OF SECTION 6.—The Act is
17 amended—

18 (1) by striking out "SEC. 6." in section 6 (15
19 U.S.C. 66), and

20 (2) by inserting immediately before such section
21 the following:

22 "SEC. 14. SHORT TITLE."

AMENDMENT NO. 1674

Purpose: To establish within the Department of Commerce an office to promote and encourage the formation and utilization of export trade associations, and for other purposes.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 864

To establish within the Department of Commerce an office to promote and encourage the formation and utilization of export trade associations, and for other purposes.

February 26 (legislative day, January 3), 1980

Referred to the Committee on Banking, Housing, and Urban Affairs, and ordered to be printed

AMENDMENT intended to be proposed by Mr. DANFORTH (for himself, Mr. BENTSEN, Mr. CHAFEE, Mr. HEINZ, Mr. JAVITS, and Mr. MATHIAS)

Viz: Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Export Trade Associ-
3 ation Act of 1980".

4 SEC. 2. FINDINGS; DECLARATION OF PURPOSE.

5 (a) FINDINGS.—The Congress finds and declares that—

6 (1) the exports of the American economy are re-
7 sponsible for creating and maintaining one out of every
8 nine manufacturing jobs in the United States and for
9 generating one out of every seven dollars of total
10 United States goods produced;

1 (2) exports will play an even larger role in the
2 United States economy in the future in the face of
3 severe competition from foreign government owned and
4 subsidized commercial entities;

5 (3) between 1968 and 1977 the United States
6 share of total world exports fell from 19 per centum to
7 13 per centum;

8 (4) trade deficits contribute to the decline of the
9 dollar on international currency markets, fueling infla-
10 tion at home;

11 (5) service-related industries are vital to the well-
12 being of the American economy inasmuch as they
13 create jobs for seven out of every ten Americans, pro-
14 vide 65 per centum of the Nation's gross national
15 product, and represent a small but rapidly rising per-
16 centage of United States international trade;

17 (6) small and medium-sized firms are prime bene-
18 ficiaries of joint exporting, through pooling of technical
19 expertise, help in achieving economies of scale, and as-
20 sistance in competing effectively in foreign markets; and

21 (7) the Department of Commerce has as one of its
22 responsibilities the development and promotion of
23 United States exports.

24 (b) PURPOSE.—It is the purpose of this Act to encour-
25 age American exports by establishing an office within the

1 Department of Commerce to encourage and promote the for-
2 mation of export trade associations through the Webb-
3 Pomerene Act, by making the provisions of that Act explicit-
4 ly applicable to the exportation of services, and by transfer-
5 ring the responsibility for administering that Act from the
6 Chairman of the Federal Trade Commission to the Secretary
7 of Commerce.

8 **SEC. 3. DEFINITIONS.**

9 The Webb-Pomerene Act (15 U.S.C. 61-66) is amend-
10 ed by striking out the first section (15 U.S.C. 61) and
11 inserting in lieu thereof the following:

12 **"SECTION 1. DEFINITIONS.**

13 "As used in this Act—

14 "(1) **EXPORT TRADE.**—The term 'export trade'
15 means trade or commerce in goods, wares, merchan-
16 dise, or services exported, or in the course of being
17 exported from the United States or any territory there-
18 of to any foreign nation.

19 "(2) **SERVICE.**—The term 'service' means intangi-
20 ble economic output, including, but not limited to—

21 "(A) business, repair, and amusement serv-
22 ices;

23 "(B) management, legal engineering, archi-
24 tectural, and other professional services; and

1 “(C) financial, insurance, transportation, and
2 communication services.

3 “(3) EXPORT TRADE ACTIVITIES.—The term
4 ‘export trade activities’ includes any activities or
5 agreements which are incidental to export trade.

6 “(4) TRADE WITHIN THE UNITED STATES.—The
7 term ‘trade within the United States’ whenever used in
8 this Act means trade or commerce among the several
9 States or in any Territory of the United States, or in
10 the District of Columbia, or between any such Terri-
11 tory and another, or between any such Territory or
12 Territories and any State or States or the District of
13 Columbia, or between the District of Columbia and any
14 State or States.

15 “(5) ASSOCIATION.—The term ‘association’
16 means any combination, by contract or other arrange-
17 ment, of persons who are citizens of the United States,
18 partnerships which are created under and exist pursu-
19 ant to the laws of any State or of the United States, or
20 corporations which are created under and exist pursu-
21 ant to the laws of any State or of the United States.

22 “(6) ANTITRUST LAWS.—The term ‘antitrust
23 laws’ means the antitrust laws defined in the first sec-
24 tion of the Clayton Act (15 U.S.C. 12) and section 4
25 of the Federal Trade Commission Act (15 U.S.C. 44),

1 any other law of the United States in pari materia with
2 those laws, and any State antitrust or unfair competi-
3 tion law.

4 “(7) SECRETARY.—The term ‘Secretary’ means
5 the Secretary of Commerce.

6 “(8) ATTORNEY GENERAL.—The term ‘Attorney
7 General’ means the Attorney General of the United
8 States.

9 “(9) CHAIRMAN.—The term ‘Chairman’ means
10 the Chairman of the Federal Trade Commission.”.

11 **SEC. 4. ANTITRUST EXEMPTION.**

12 The Webb-Pomerene Act (15 U.S.C. 61–66) is amend-
13 ed by striking out the second and fourth sections (15 U.S.C.
14 62 and 64) and inserting in lieu thereof the following:

15 **“SEC. 2. EXEMPTION FROM ANTITRUST LAWS.**

16 “(a) GENERAL RULE.—Any association, entered into
17 for the sole purpose of engaging in export trade, and engaged
18 in such export trade, is exempt from the application of the
19 antitrust laws if the association, its export trade and methods
20 of operation in which it and its members are engaged or pro-
21 pose to be engaged—

22 “(1) serve to preserve or promote export trade;

23 “(2) result in neither a substantial restraint of
24 trade or lessening of competition within the United

1 States nor a substantial restraint of the export trade of
2 any domestic competitor of such association;

3 “(3) do not unreasonably enhance, stabilize, or de-
4 press prices within the United States of the goods,
5 wares, merchandise, or services of the class exported
6 by such association;

7 “(4) do not constitute unfair methods of competi-
8 tion against domestic competitors engaged in the
9 export trade of goods, wares, merchandise, or services
10 of the class exported by such association;

11 “(5) do not include any act which results, or may
12 reasonably be expected to result, in the sale for con-
13 sumption or resale within the United States of the
14 goods, wares, merchandise, or services exported by the
15 association or its members;

16 “(6) do not constitute trade or commerce in the
17 licensing of patents, technology, trademarks, or know-
18 how, except as incidental to the sale of the goods,
19 wares, merchandise, or services exported by the associ-
20 ation or its members.

21 “(b) EXEMPTION.—The export trade and methods of
22 operation of an association certified according to the proce-
23 dures set forth in this Act shall remain exempt from the ap-
24 plication of the antitrust laws until the association’s certifica-
25 tion is revoked pursuant to subsection (d) or (e) of section 4 of

1 this Act. And provided further, that if an association's certifi-
 2 cation is revoked, neither it nor any of its members shall be
 3 subject to an action under the antitrust laws for the period
 4 during which the certification was in existence as to those
 5 export trade activities and methods of operation which were
 6 certified according to the procedures set forth in this Act.”.

7 **SEC. 5. AMENDMENT OF SECTION 3.**

8 (a) **CONFORMING CHANGES IN STYLE.**—The Webb-
 9 Pomerene Act (15 U.S.C. 61–66) is amended—

10 (1) by inserting immediately before section 3 (15
 11 U.S.C. 63) the following:

12 **“SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-**
 13 **ATIONS PERMITTED.”,**

14 (2) by striking out “SEC. 3. That nothing” in sec-
 15 tion 3 and inserting in lieu thereof “Nothing”.

16 **SEC. 6. ADMINISTRATION; ENFORCEMENT; REPORTS.**

17 (a) **IN GENERAL.**—The Webb-Pomerene Act (15
 18 U.S.C. 61–66) is amended by striking out section 5 (15
 19 U.S.C. 65) and inserting in lieu thereof the following sec-
 20 tions:

21 **“SEC. 4. CERTIFICATION.**

22 **“(a) PROCEDURE FOR APPLICATION.**—In order to
 23 obtain certification as an association engaged solely in export
 24 trade, a person shall file with the Secretary, a written appli-
 25 cation for certification setting forth the following:

1 “(1) The name of the association.

2 “(2) The location of all of the association’s offices
3 or places of business in the United States and abroad.

4 “(3) The names and addresses of all of the associ-
5 ation’s officers, stockholders, and members.

6 “(4) A copy of the certificate or articles of incor-
7 poration and bylaws, if the association is a corporation;
8 or a copy of the articles or contract of association, if
9 the association is unincorporated.

10 “(5) A description of the goods, wares, merchan-
11 dise, or services which the association or its members
12 export or propose to export.

13 “(6) A description of the domestic and interna-
14 tional conditions, circumstances, and factors which
15 make the association and its activities useful for the
16 purpose of promoting the export trade of the described
17 goods, wares, merchandise, or services.

18 “(7) The export trade activities in which the asso-
19 ciation intends to engage and the methods by which
20 the association conducts or proposes to conduct export
21 trade in the described goods, wares, merchandise, or
22 services, including, but not limited to, any agreements
23 to sell exclusively to or through the association, any
24 agreements with foreign persons who may act as joint
25 selling agents, any agreements to acquire a foreign

1 selling agent, any agreements for pooling tangible or
2 intangible property or resources, or any territorial,
3 price-maintenance, membership, or other restrictions to
4 be imposed upon members of the association.

5 “(8) The names of all countries where export
6 trade in the described goods, wares, merchandise, or
7 services is conducted or proposed to be conducted by
8 or through the association.

9 “(9) Any other information which the Secretary
10 may request concerning the organization, operation,
11 management, or finances of the association; the rela-
12 tion of the association to other associations, corpora-
13 tions, partnerships, and individuals; and competition or
14 potential competition, and effects of the association
15 thereon. The Secretary may request such information
16 as part of an initial application or as a necessary sup-
17 plement thereto. The Secretary may not request infor-
18 mation under this paragraph which is not reasonably
19 available to the person making application or which is
20 not necessary for certification of the prospective
21 association.

22 “(b) ISSUANCE OF CERTIFICATE.—

23 “(1) NINETY-DAY PERIOD.—The Secretary shall
24 certify an association within ninety days after receiving
25 the association’s application for certification or

1 necessary supplement thereto if the Secretary, after
2 consultation with the Attorney General and Chairman,
3 determines that the association and its members, the
4 export trade and methods of operation, meet the re-
5 quirements of section 2 of this Act.

6 “(2) EXPEDITED CERTIFICATION.—In those in-
7 stances where the temporary nature of the export trade
8 activities, deadlines for bidding on contracts or filling
9 orders, or any other circumstances beyond the control
10 of the association which have a significant impact on
11 the association’s export trade, make the ninety-day
12 period for application approval described in paragraph
13 (1) of this subsection, or an amended application ap-
14 proval as provided in subsection (c) of this section, im-
15 practical for the person seeking certification as an as-
16 sociation, such person may request and may receive
17 expedited action on his application for certification.

18 “(3) APPEAL OF DETERMINATION.—If the Secre-
19 tary determines not to certify an association which has
20 submitted an application or an amended application for
21 certification, then he shall—

22 “(A) notify the association of his determina-
23 tion and the reasons for his determination, and

24 “(B) upon request made by the association,
25 afford the association an opportunity for a hearing

1 with respect to that determination in accordance
2 with section 557 of title 5, United States Code.

3 “(c) MATERIAL CHANGES IN CIRCUMSTANCES;
4 AMENDMENT OF CERTIFICATION.—Whenever there is a
5 material change in the association’s membership, export
6 trade, export trade activities, or methods of operation, the
7 association shall report such change to the Secretary and
8 may apply to the Secretary for an amendment of its certifica-
9 tion. Any application for an amendment to an association’s
10 certification shall set forth the requested amendment of the
11 certification and the reasons for the requested amendment.
12 Any request for the amendment of certification shall be treat-
13 ed in the same manner as an original application for certifica-
14 tion. If the request is filed within thirty days after a material
15 change (as determined by the Secretary) which requires the
16 amendment, and if the requested amendment is approved,
17 then there shall be no interruption in the period for which
18 certification is in effect.

19 “(d) AMENDMENT OR REVOCATION OF CERTIFICATE
20 BY SECRETARY.—After notifying the association involved
21 and after an opportunity for hearing pursuant to section 554
22 of title 5, United States Code, the Secretary, on his own
23 initiative—

24 “(A) may require that an association’s certifica-
25 tion be amended,

1 “(B) may require that the organization or oper-
2 ation of the association be modified to correspond with
3 the association’s certification, or

4 “(C) shall revoke, in whole or in part, the certifi-
5 cation of the association upon a determination that the
6 association, its export trade activities or methods of op-
7 eration no longer meet the criteria of section 2 of this
8 Act.

9 “(e) ACTION FOR INVALIDATION OF CERTIFICATION
10 BY ATTORNEY GENERAL OR CHAIRMAN.—

11 “(1) The Attorney General or the Chairman may
12 bring an action against an association or its members
13 to revoke, in whole or in part, the association’s certifi-
14 cation on the ground that it fails, or has failed to meet
15 the criteria of section 2 of this Act. The Attorney Gen-
16 eral or Chairman shall notify any association, or appli-
17 cable members, against which it intends to bring an
18 action for revocation, thirty days in advance, as to its
19 intent to file an action under this subsection.

20 “(2) Any action brought under this subsection
21 shall be considered an action described in section 1337
22 of title 28, United States Code.

23 “(3) No person other than the Attorney General
24 or the Chairman shall have standing to bring an action
25 against an association, certified according to the proce-

1 dures set forth in this Act, or any of its members for
2 failure to meet the criteria of section 2 of this Act.

3 **"SEC. 5. GUIDELINES.**

4 **"(a) INITIAL PROPOSED GUIDELINES.**—Within ninety
5 days after the enactment of the Export Trade Association
6 Act of 1980, the Secretary, after consultation with the Attor-
7 ney General, and the Chairman, shall publish proposed
8 guidelines for purposes of determining whether an associ-
9 ation, its members, and its export trade activities will meet
10 the requirements of section 2 of this Act.

11 **"(b) PUBLIC COMMENT PERIOD.**—Following publica-
12 tion of the proposed guidelines, and any proposed revision of
13 guidelines, interested parties shall have thirty days to com-
14 ment on the proposed guidelines. The Secretary, after consul-
15 tation with the Attorney General, and the Chairman, shall
16 review the comments and publish final guidelines within
17 thirty days after the last day on which comments may be
18 made under the preceding sentence.

19 **"(c) PERIODIC REVISION.**—After publication of the
20 final guidelines, the Secretary, after consultation with the At-
21 torney General, and the Chairman, shall periodically review
22 the guidelines and propose revisions as needed.

23 **"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE**
24 **ACT.**—The promulgation of guidelines under this section
25 shall not be considered rulemaking for purposes of subchapter

1 II of chapter 5 of title 5, United States Code, and section
2 553 of such title shall not apply to their promulgation.

3 **"SEC. 6. ANNUAL REPORTS.**

4 "Every certified association shall submit to the Secre-
5 tary an annual report, in such form and at such time as he
6 may require, which report updates where necessary the infor-
7 mation described by section 4(a) of this Act.

8 **"SEC. 7. OFFICE OF EXPORT TRADE IN COMMERCE DEPART-**
9 **MENT.**

10 "The Secretary shall establish within the Department of
11 Commerce an office to promote and encourage to the great-
12 est extent feasible the formation of export trade associations
13 through the use of provisions of this Act in a manner consist-
14 ent with this Act.

15 **"SEC. 8. AUTOMATIC CERTIFICATION FOR EXISTING ASSOCI-**
16 **ATIONS.**

17 "The Secretary shall certify any export trade associ-
18 ation registered with the Federal Trade Commission as of the
19 date of enactment of the Export Trade Association Act of
20 1980, if such association, within one hundred and eighty days
21 after the date of enactment of such Act, files with the Secre-
22 tary an application for certification as provided for in section
23 5 of this Act, unless such application shows on its face that
24 the association is not eligible for certification under this Act.

1 "SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL
2 REPORT INFORMATION.

3 "(a) GENERAL RULE.—Portions of applications made
4 under section 4, including amendments to such applications,
5 and annual reports made under section 6 that contain trade
6 secrets or confidential business or financial information, the
7 disclosure of which would harm the competitive position of
8 the person submitting such information shall be confidential,
9 and, except as authorized by this section, no officer or em-
10 ployee, or former officer or employee, of the United States
11 shall disclose any such confidential information, obtained by
12 him in any manner in connection with his service as such an
13 officer or employee.

14 "(b) DISCLOSURE TO ATTORNEY GENERAL OR CHAIR-
15 MAN.—The Secretary may make available portions of appli-
16 cations, amendments thereto or annual reports, or informa-
17 tion derived therefrom to the Attorney General or Chairman,
18 or any employee or officer thereof, for official use in connec-
19 tion with an investigation or judicial or administrative pro-
20 ceeding under this Act or the antitrust laws to which the
21 United States or such agency is or may be a party. Such
22 information may only be disclosed by the Secretary upon a
23 prior certification that the information will be maintained in
24 confidence and will only be used for official law enforcement
25 purposes by the Attorney General or Chairman.

1 **"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
2 **UNITED STATES OBLIGATIONS.**

3 "At such time as the United States undertakes binding
4 international obligations by treaty or statute, to the extent
5 that the operations of any export trade association, certified
6 under this Act or registered under this Act, before its amend-
7 ment by the Export Trade Association Act of 1980, are in-
8 consistent with such international obligations, the Secretary
9 may require such association to modify its operations so as to
10 be consistent with such international obligations.

11 **"SEC. 11. REGULATIONS.**

12 "The Secretary, in consultation with the Attorney Gen-
13 eral and the Chairman, shall promulgate such rules and regu-
14 lations as may be necessary to carry out the purposes of this
15 Act.

16 **"SEC. 12. TASK FORCE STUDY.**

17 "Seven years after the date of enactment of the Export
18 Trade Association Act of 1980, the President shall appoint,
19 by and with the advice and consent of the Senate, a task
20 force to examine the effect of the operation of this Act on
21 domestic competition and on the United States international
22 trade deficit and to recommend either continuation, revision,
23 or termination of the Webb-Pomerene Act. The task force
24 shall have one year to conduct its study and to make its
25 recommendations to the President."

1 (b) REDESIGNATION OF SECTION 6.—The Act is
2 amended—

3 (1) by striking out “SEC. 6.” in section 6 (15
4 U.S.C. 66), and

5 (2) by inserting immediately before such section
6 the following:

7 “SEC. 13. SHORT TITLE.”.

96TH CONGRESS
1ST SESSION

S. 1499

To promote and encourage the formation and utilization of export trade associations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 12 (legislative day, JUNE 21), 1979

Mr. ROTH introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To promote and encourage the formation and utilization of export trade associations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Export Trade Activities
5 Act".

6 **SEC. 2. FINDINGS; DECLARATION OF PURPOSE.**

7 (a) **FINDINGS.**—The Congress finds and declares that—

1 (1) exports account for one out of every six jobs
2 in the manufacturing sector and 8 percent of the gross
3 national product of the United States;

4 (2) every billion dollars in new exports is estimat-
5 ed to provide 40,000 jobs, \$2,000,000,000 in national
6 income, and \$400,000,000 in Government revenue;

7 (3) there is increasingly fierce competition to
8 American goods and services in international markets;

9 (4) the ability to pool resources and expertise
10 would help equalize the bargaining position of Ameri-
11 can businesses in international transactions, particular-
12 ly of small- and medium-sized businesses; and

13 (5) the existing legislation involving export trade
14 associations is outdated and needs to be changed to
15 make export trade associations more useful.

16 (b) **PURPOSE.**—It is the purpose of this Act to encour-
17 age and promote the formation of export trade associations,
18 and to enable businesses to share the costs of export trade.
19 The Federal Trade Commission shall consider and process
20 applications submitted under section 6 as expeditiously as
21 possible. The Secretary of Commerce shall take appropriate
22 measures to encourage the establishment and use of such as-
23 sociations.

24 **SEC. 3. DEFINITIONS.**

25 As used in this Act—

1 (1) EXPORT TRADE.—The term “export trade”
2 means trade or commerce in goods, wares, merchan-
3 dise, or services exported, or in the course of being ex-
4 ported, from the United States to any foreign nation,
5 but does not include—

6 (A) trade or commerce in any such goods,
7 products, or merchandise subsequently imported
8 into the United States for sale for consumption or
9 resale, without regard to whether they are im-
10 ported in the same condition as when they were
11 exported from the United States or in a changed
12 condition by reason of remanufacture or other-
13 wise, or

14 (B) trade or commerce in patents, licenses,
15 trade secrets, or technology (except to the extent
16 that technology is incidental to the sale of such
17 goods, products, merchandise, or services).

18 (2) EXPORT TRADE ACTIVITIES.—The term
19 “export trade activities” includes any activities or
20 agreements which are incidental to export trade.

21 (3) UNITED STATES.—The term “United States”
22 means the several States of the United States, the Dis-
23 trict of Columbia, the Commonwealth of Puerto Rico,
24 the Virgin Islands, American Samoa, Guam, and the
25 Trust Territory of the Pacific Islands.

1 (4) ASSOCIATION.—The term “association”
2 means any combination, by contract or other arrange-
3 ment, of persons who are citizens of the United States,
4 partnerships which are created under and exist pursu-
5 ant to the laws of any State or of the United States, or
6 corporations which are created under and exist pursu-
7 ant to the laws of any State or of the United States.

8 (5) ANTITRUST LAWS.—The term “antitrust
9 laws” means the antitrust laws defined in the first sec-
10 tion of the Clayton Act (15 U.S.C. 12) and section 4
11 of the Federal Trade Commission Act (15 U.S.C. 44),
12 any other law of the United States in pari materia with
13 those laws, and any State antitrust or unfair competi-
14 tion law.

15 (6) COMMISSION.—The term “Commission”
16 means the Federal Trade Commission.

17 (7) CHAIRMAN.—The term “Chairman” means
18 the Chairman of the Federal Trade Commission.

19 (8) ATTORNEY GENERAL.—The term “Attorney
20 General” means the Attorney General of the United
21 States.

22 **SEC. 4. ANTITRUST EXEMPTION.**

23 An association certified under section 6 of this Act, en-
24 tered into for the sole purpose of engaging in export trade,
25 and engaged in export trade activities, and its members, are

1 exempt from the application of the antitrust laws except to
2 the extent that the existence of the association, or the activi-
3 ties in which it and its members are engaged, result in—

4 (1) restraint of trade within the United States,

5 (2) a substantial decrease in competition within
6 the United States, or

7 (3) a substantial restraint of the export trade of
8 any domestic competitor.

9 **SEC. 5. ENFORCEMENT.**

10 (a) **EXCLUSIVE JURISDICTION OF COMMISSION.**—The
11 Commission shall have exclusive jurisdiction to determine
12 whether an association certified under section 6—

13 (1) has failed to comply with the terms and condi-
14 tions of its certification, or

15 (2) has taken any action which is inconsistent
16 with the requirements of section 4.

17 (b) **DETERMINATIONS.**—The Commission shall make a
18 determination under subsection (a) after an investigation
19 commenced after receipt of a complaint, filed with it at such
20 time and in such manner as it may require, or upon its own
21 motion, and after notice to the association and an opportunity
22 for a hearing on the record.

23 (c) **REMEDIES.**—If the determination of the Commission
24 under subsection (a) is affirmative, then it may—

1 (1) in the case of an affirmative determination
2 under subsection (a)(1)—

3 (A) require the association to file an amended
4 application for certification under section 6(c),

5 (B) require the association to modify its orga-
6 nization or operations,

7 (C) revoke, in whole or in part, the certifica-
8 tion of the association, or

9 (D) refer the matter to the Attorney General
10 for prosecution under the antitrust laws, or

11 (2) in the case of an affirmative determination
12 under subsection (a)(2)—

13 (A) require the association to modify its or-
14 ganization or operations, or

15 (B) revoke, in whole or in part, the certifica-
16 tion of the association.

17 (d) CIVIL ACTIONS BY INJURED PARTIES.—

18 (1) STANDING REQUIREMENT.—No person shall
19 have standing to bring an action against an association
20 certified under section 6 for injuries arising out of the
21 export trade activities of that association unless—

22 (A) the Commission has made an affirmative
23 determination under subsection (a) with respect to
24 the activities of the association to which the
25 action relates, and

1 (B) those activities have, as a purpose or as
2 a primary effect, a result described in section 4.

3 (2) LIMITATION ON DAMAGES.—Notwithstanding
4 any other provision of law to the contrary, damages in
5 excess of the amount necessary to compensate the in-
6 jured party for losses suffered may not be awarded in
7 any action brought against an association certified
8 under section 6 for injuries arising out of its export
9 trade activities.

10 SEC. 6. CERTIFICATION.

11 (a) APPLICATION.—In order to become certified as an
12 association engaged solely in export trade, a person shall file
13 with the Federal Trade Commission a written application for
14 certification setting forth the following:

15 (1) The name of the association.

16 (2) The location of the association's offices or
17 places of business in the United States and abroad.

18 (3) The names and addresses of the association's
19 officers, stockholders, and members.

20 (4) A copy of the certificate or articles of incorpo-
21 ration and bylaws, if the association is a corporation;
22 or a copy of the articles or contract of association, if
23 the association is unincorporated.

1 (5) A description of the goods, wares, merchan-
2 dise, or services which the association or its members
3 export or propose to export.

4 (6) The methods by which the association con-
5 ducts or proposes to conduct export trade in the de-
6 scribed goods, wares, merchandise, or services, includ-
7 ing, but not limited to, any agreements to sell exclu-
8 sively to or through the association, any agreements
9 with foreign persons who may act as joint selling
10 agents, any agreements to acquire a foreign selling
11 agent, any agreements for pooling tangible or intangi-
12 ble property or resources, or any territorial,
13 price=maintenance, membership, or other restrictions
14 to be imposed upon members of the association.

15 (7) The names of all countries where export trade
16 in the described goods, wares, merchandise, or services
17 is conducted or proposed to be conducted by or
18 through the association.

19 (8) Any other information which the Commission
20 may request concerning the organization, operation,
21 management, or finances of the association; the rela-
22 tion of the association to other associations, corpora-
23 tions, partnerships, and individuals; and competition or
24 potential competition, and effects of the association
25 thereon. The Commission may not request information

1 under this paragraph which is not reasonably available
2 to the person making application or which is not neces-
3 sary for certification of the prospective association.

4 (b) ISSUANCE OF CERTIFICATE.—Based upon the in-
5 formation obtained from the application, the Commission
6 shall certify an association within 90 days after receiving the
7 association's application for certification if the Commission
8 determines that the association and its members and the pro-
9 posed export trade activities meet the requirements of section
10 4 of this Act. The certification may be issued subject to such
11 terms and conditions as the Commission determines to be
12 appropriate to ensure that the association and its activities
13 meet the requirements for certification during the period for
14 which the certification is in effect, and that all members of
15 the association are treated equitably.

16 (c) MATERIAL CHANGES IN CIRCUMSTANCES; AMEND-
17 MENT OF APPLICATION.—

18 (1) VOIDING OF CERTIFICATION.—Whenever
19 there is a material change in—

20 (A) the domestic and international conditions,
21 circumstances, and factors which make an associ-
22 ation useful for the purpose of promoting the
23 export trade of its goods, wares, merchandise, or
24 services, or

1 (B) the association's membership, export
2 trade, export trade activities, or methods of oper-
3 ation which would cause the association to fail to
4 meet any requirement of section 4,
5 then the association shall apply to the Commission for
6 an amendment of its certification.

7 (2) AMENDMENT OF APPLICATION.—The request
8 for amendment shall be filed within 30 days after the
9 date of the material change and shall set forth the re-
10 quested amendment of the application and the reasons
11 for the requested amendment. Any request for the
12 amendment of an application shall be treated in the
13 same manner as an original application for certifica-
14 tion. If the request is filed within 30 days after the
15 material change which requires the amendment, and if
16 the requested amendment is approved, then there shall
17 be no interruption in the period for which certification
18 is in effect.

19 (3) AMENDMENT UPON RECOMMENDATION OF
20 COMMISSION.—After notice to the association involved
21 and the opportunity for a hearing on the record, the
22 Commission may, on its own initiative, or upon the
23 recommendation of the Attorney General or any other
24 person—

1 (A) require that an association's certification
2 be amended,

3 (B) require that the organization or operation
4 of the association be modified to correspond with
5 the association's certification, or

6 (C) revoke, in whole or in part, the certifica-
7 tion of the association upon a finding that the as-
8 sociation, its members, or its export trade activi-
9 ties do not meet the requirements of section 4 of
10 this Act.

11 **SEC. 7. GUIDELINES.**

12 (a) **INITIAL PROPOSED GUIDELINES.**—The Commis-
13 sion and the Attorney General shall publish proposed guide-
14 lines for purposes of determining whether an association, its
15 members, and its export trade activities meet the require-
16 ments of section 4 of this Act.

17 (b) **PERIODIC REVISION.**—After publication of the
18 guidelines, the Commission and the Attorney General shall
19 meet periodically to revise the guidelines as needed.

20 **SEC. 8. CERTIFICATION FOR EXISTING ASSOCIATIONS.**

21 The Commission shall certify any export trade associ-
22 ation registered with the Federal Trade Commission as of the
23 date of enactment of this Act if such association, within 180
24 days after that date, files with the Commission an application
25 for certification as provided for in section 6 of this Act, unless

1 such application shows on its face that the association is not
2 eligible for certification under this Act. If the application sub-
3 mitted by such an association shows on its face that the asso-
4 ciation is not eligible for certification under this Act, its regis-
5 tration under the Webb-Pomerene Act shall cease to be ef-
6 fective 30 days after the date on which the Commission noti-
7 fies the association of its determination of ineligibility.

8 **SEC. 9. REVIEW OF DETERMINATIONS.**

9 Whenever the Commission makes a determination under
10 this Act with respect to an application for certification, the
11 amendment, modification, or revocation of a certification, or
12 the modification of the organization or operation of an export
13 trade association, it shall—

14 (1) notify the association of its determination and
15 the reasons for its determination, and

16 (2) upon request made by the association, afford
17 the association an opportunity for a hearing.

18 **SEC. 10. ANNUAL REPORTS.**

19 Every certified association shall submit an annual report
20 to the Commission on January 2 of each year, in such form
21 as it may require, setting forth the information described by
22 section 6(a) of this Act.

1 **SEC. 11. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
2 **UNITED STATES OBLIGATIONS.**

3 At such time as the United States undertakes interna-
4 tional obligations by treaty or statute, to the extent that the
5 operations of any export trade association, certified under
6 this Act are inconsistent with such international obligations,
7 the Commission or Attorney General may require such asso-
8 ciation to modify its operations so as to be consistent with
9 such international obligations.

10 **SEC. 12. REGULATIONS.**

11 The Commission, in consultation with the Attorney
12 General, shall promulgate such rules and regulations as may
13 be necessary to carry out the purposes of this Act.

14 **SEC. 13. REPEAL OF WEBB-POMERENE ACT.**

15 The Webb-Pomerene Act (15 U.S.C. 61-66) is repealed
16 as of the 90th day after the date of enactment of this Act.

96TH CONGRESS
1ST SESSION

S. 1663

To encourage exports by providing for the licensing of export trading companies by the Secretary of Commerce, and by otherwise facilitating their formation and operation.

IN THE SENATE OF THE UNITED STATES

AUGUST 2 (legislative day, JUNE 21), 1979

Mr. STEVENSON introduced the following bill; which was read twice and referred jointly by unanimous consent to the Committees on Banking, Housing, and Urban Affairs and Finance

A BILL

To encourage exports by providing for the licensing of export trading companies by the Secretary of Commerce, and by otherwise facilitating their formation and operation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Export Trading Compa-
5 ny Act of 1979".

1 TITLE I—ESTABLISHMENT OF EXPORT TRADING
2 COMPANIES

3 SEC. 101. DEFINITIONS.

4 As in this title—

5 (1) EXPORT TRADE.—The term “export trade”
6 means trade or commerce in goods produced in the
7 United States or services produced in the United
8 States exported, or in the course of being exported,
9 from the United States to any foreign nation.

10 (2) GOODS PRODUCED IN THE UNITED
11 STATES.—The term “goods produced in the United
12 States” means tangible property not less than 75 per-
13 cent of the total value, or of the value added to a ma-
14 terial or commodity through manufacturing or process-
15 ing, of which is attributable to the United States.

16 (3) SERVICES PRODUCED IN THE UNITED
17 STATES.—The term “services produced in the United
18 States” means architectural, engineering, consulting,
19 legal, training, financial, insurance, management, com-
20 munications, and other services not less than 75 per-
21 cent of the value of which is provided by United States
22 citizens or is otherwise attributable to the United
23 States.

1 (4) EXPORT TRADE ACTIVITIES.—The term
2 “export trade activities” includes any activity which is
3 incidental to export trade.

4 (5) UNITED STATES.—The term “United States”
5 means the several States of the United States, the Dis-
6 trict of Columbia, the Commonwealth of Puerto Rico,
7 the Virgin Islands, American Samoa, Guam, and the
8 Trust Territory of the Pacific Islands.

9 (6) ANTITRUST LAWS.—The term “antitrust
10 laws” means the antitrust laws defined in the first sec-
11 tion of the Clayton Act (15 U.S.C. 12) and section 4
12 of the Federal Trade Commission Act (15 U.S.C. 44),
13 any other law of the United States in pari materia with
14 those laws, and any State antitrust or unfair competi-
15 tion law, and all amendments to the foregoing.

16 (7) SECRETARY.—The term “Secretary” means
17 the Secretary of Commerce.

18 (8) ATTORNEY GENERAL.—The term “Attorney
19 General” means the Attorney General of the United
20 States.

21 SEC. 102. LICENSING.

22 (a) ELIGIBILITY.—In order to be licensed by the Secre-
23 tary as an export trading company under this section, an ap-
24 plicant shall demonstrate, to the satisfaction of the Secretary,
25 that it meets all requirements under this title for licensing

1 and that it is, or will be, organized and operated principally
2 for the purposes of—

3 (1) exporting goods and services produced in the
4 United States, and

5 (2) facilitating the exportation of goods and serv-
6 ices produced in the United States by providing export
7 services such as international market research, adver-
8 tising, marketing, insurance, legal assistance, transpor-
9 tation, including trade documentation and freight for-
10 warding, communication and processing of foreign
11 orders to and for exporters and foreign purchasers,
12 warehousing, foreign exchange, financing, and any
13 other export services determined by the Secretary by
14 regulation to be consistent with the purposes of this
15 title.

16 (b) APPLICATION.—In order to be licensed by the Sec-
17 retary as an export trading company, a firm shall file with
18 the Secretary a written application setting forth the
19 following:

20 (1) The name of the firm.

21 (2) The location of the firm's offices or places of
22 business in the United States and abroad.

23 (3) The names and addresses of the firm's officers,
24 stockholders, and members.

1 (4) A copy of the certificate or articles of incorpo-
2 ration and bylaws, if the firm is a corporation; or a
3 copy of the agreement establishing the firm, if the firm
4 is unincorporated.

5 (5) A general description of the goods or services
6 which the firm exports or proposes to export.

7 (6) The methods by which the firm conducts or
8 proposes to conduct export trade in the described
9 goods or services, including, but not limited to, any
10 agreement to sell exclusively to or through the firm,
11 any agreement with foreign persons who may act as
12 joint selling agents, any agreement to acquire a foreign
13 selling agent, and any agreement for pooling tangible
14 or intangible property or resources.

15 (7) The names of all countries where export trade
16 in the described goods or services is conducted or pro-
17 posed to be conducted by or through the firm.

18 (8) Any other information concerning the organi-
19 zation, operation, management, or finances of the firm,
20 the relation of the firm to other firms, corporations,
21 partnerships, and individuals, and competition or poten-
22 tial competition the Secretary deems necessary for pur-
23 poses of administering this title.

24 (c) OWNERSHIP REQUIREMENTS.—

1 (1) IN GENERAL.—The Secretary may not issue a
2 license to an export trading company under this section
3 if—

4 (A) any partnership, association, or corpora-
5 tion owned or controlled by a foreign corporation
6 or other foreign entity owns stock, or other secu-
7 rities with voting rights, issued by the export
8 trading company, or

9 (B) any person owns, directly or indirectly,
10 more than 20 percent of the voting stock or inter-
11 est in the export trading company.

12 (2) DIVESTITURE TO MEET CONTROL LIMITA-
13 TION.—Notwithstanding the limitation of paragraph
14 (1)(B), the Secretary shall not deny a license to an
15 export trading company solely because of such limita-
16 tion if—

17 (A) the person or persons whose ownership
18 of stock or interest exceeds the limitation submits
19 a divestiture plan under which he will divest him-
20 self of his stock or interest in excess of the limita-
21 tion over a 10-year period beginning with the
22 year in which the license is issued with—

23 (i) the first sale or transfer of stock or
24 interest occurring not later than the fifth
25 year of such period,

1 (ii) the divestiture progressing no less
2 rapidly than ratably over the years remaining
3 between the first year of divestiture and the
4 last year of the 10-year period, and

5 (iii) divestiture completed, to the extent
6 necessary to meet the limitation under para-
7 graph (1)(B) by the close of such last year,
8 and

9 (B) such reports, no less frequently than an-
10 nually, to the Secretary on the progress of the di-
11 vestiture as he may require.

12 (d) LIMITATIONS ON ACTIVITIES OF LICENSED
13 EXPORT TRADING COMPANIES.—The Secretary may not
14 issue a license under this section to, and shall revoke any
15 such license issued to, an export trading company if that
16 company engages in manufacturing directly or through a do-
17 mestic or foreign corporation which is a member of the con-
18 trolled group of corporations (within the meaning of section
19 1563 of the Internal Revenue Code of 1954) of which the
20 export trading company is a member. For the purpose of this
21 subsection, the term “manufacturing” does not include pack-
22 aging or limited fabrication and final assembly of products
23 which otherwise meet the definition in section 101(2) of
24 “goods produced in the United States.” The Secretary may
25 not decline to issue such a license, or revoke such a license,

1 on the ground that the export trading company is engaged in
2 activities (other than manufacturing) other than activities in-
3 volving export trade to the extent that such other activities
4 (other than manufacturing) are necessary to encourage and
5 facilitate exports of goods and services produced in the
6 United States.

7 (e) ISSUANCE OF LICENSE.—Based upon the informa-
8 tion obtained from the application, the Secretary shall license
9 an export trading company within 90 days after receiving the
10 application for licensing if the Secretary determines that the
11 firm and the proposed export trade activities meet the re-
12 quirements of this title. The license may be issued subject to
13 such terms and conditions as the Secretary determines to be
14 appropriate to ensure that the export trading company and
15 its activities meet the requirements for licensing during the
16 period for which the license is in effect.

17 (f) MATERIAL CHANGES IN CIRCUMSTANCES; AMEND-
18 MENT OF APPLICATION.—

19 (1) VOIDING OF LICENSE.—Whenever there is a
20 material change in—

21 (A) the domestic and international conditions,
22 circumstances, and factors which make an export
23 trading company useful for the purpose of promot-
24 ing the export trade of its goods or services, or

1 (B) the export trading company's export
2 trade, export trade activities, or methods of oper-
3 ation which would cause the company to fail to
4 meet any requirement of this title,
5 then the company shall apply to the Secretary for an
6 amendment of its license.

7 (2) AMENDMENT OF APPLICATION.—The request
8 for amendment shall be filed within 30 days after the
9 date of the material change and shall set forth the re-
10 quested amendment of the application and the reasons
11 for the requested amendment. Any request for the
12 amendment of an application shall be treated in the
13 same manner as an original application for licensing. If
14 the request is filed within 30 days after the material
15 change which requires the amendment, and if the re-
16 quested amendment is approved, then there shall be no
17 interruption in the period for which the license is in
18 effect.

19 (3) AMENDMENT UPON RECOMMENDATION OF
20 SECRETARY.—After notice to the export trading com-
21 pany involved and the opportunity for a hearing on the
22 record, the Secretary may—

23 (A) require that an export trading company's
24 license be amended;

1 (B) require that the organization or operation
2 of the export trading company be modified to cor-
3 respond with the company's license; or

4 (C) revoke, in whole or in part, the license of
5 the export trading company upon a finding that
6 the company or its export trade activities do not
7 meet the requirements of this title.

8 SEC. 103. ENFORCEMENT.

9 (a) EXCLUSIVE JURISDICTION OF SECRETARY.—The
10 Secretary shall have exclusive jurisdiction to determine
11 whether an export trading company licensed under this
12 title—

13 (1) has failed to comply with the terms and condi-
14 tions of its license, has engaged in activities or fur-
15 nished services not described in its license application
16 or not permitted under the license, or has knowingly
17 violated any provision of this title, or

18 (2) has taken any action which is inconsistent
19 with the requirements of this title.

20 (b) DETERMINATIONS.—The Secretary shall make a
21 determination under subsection (a) after an investigation
22 commenced after receipt of a complaint, filed with the Secre-
23 tary at such time and in such manner as the Secretary may
24 require, or upon the Secretary's own motion, and after notice
25 to the export trading company named in the complaint and

1 an opportunity for a hearing on the record. The complaint
2 may be filed by any person whose economic interest is, or
3 may appear to be, adversely affected by activity to which the
4 complaint relates.

5 (c) REMEDIES.—If the determination of the Secretary
6 under subsection (a) is affirmative, then the Secretary may—

7 (1) in the case of an affirmative determination
8 under subsection (a)(1)—

9 (A) require the company to file an amended
10 application for license under section 102(d).

11 (B) require the company to modify its organi-
12 zation or operations,

13 (C) revoke, in whole or in part, the license of
14 the company, or

15 (D) refer the matter to the Attorney General
16 for prosecution under the antitrust laws, or

17 (2) in the case of an affirmative determination
18 under subsection (a)(2)—

19 (A) bring an action in the appropriate Feder-
20 al district court to enjoin or restrain the company
21 from engaging in any activity which constitutes or
22 results in anything described in paragraph (1), (2),
23 or (3) of section 106, or

24 (B) revoke, in whole or in part, the license of
25 the company.

1 (d) **STANDING REQUIREMENT.**—No person shall have
2 standing to bring an action against a company licensed under
3 section 102 for any activity which constitutes or results in
4 anything described in paragraph (1), (2), or (3) of section 106
5 other than an officer or employee of the United States acting
6 in his official capacity.

7 **SEC. 104. REVIEW OF DETERMINATIONS.**

8 Whenever the Secretary makes a determination under
9 this Act with respect to an application for a license, the
10 amendment, modification, or revocation of a license, or the
11 modification of the organization or operation of an export
12 trading company, the Secretary shall—

13 (1) notify the company of the determination and
14 the reasons for the determination, and

15 (2) upon request made by the company, afford the
16 company an opportunity for a hearing.

17 **SEC. 105. INITIAL INVESTMENTS AND OPERATING EXPENSES.**

18 (a) **ELIGIBILITY FOR LOANS AND GUARANTEES.**—Any
19 export trading company licensed under this title is eligible for
20 a direct loan or financial guarantee from the Export-Import
21 Bank of the United States, and, in the case of a small busi-
22 ness, from the Small Business Administration, and, where
23 otherwise eligible, from the Economic Development Adminis-
24 tration, to meet export-related operating expenses during the
25 first 5 years of the company's operation. Any such assistance

1 shall be used only for expenses directly related to exports and
2 export services, and shall not exceed 50 percent of the total
3 operating expenses of such company in any year. In no case
4 may the credits or guarantees to any one company exceed
5 \$10,000,000 in any single year or \$25,000,000 during the 5-
6 year period.

7 (b) EXPORT-IMPORT BANK LOANS AND GUARAN-
8 TEES.—Subject to the limitations set forth in this title and
9 the Export-Import Bank Act of 1945, the Export-Import
10 Bank of the United States may provide loan guarantees to
11 any licensed export trading company which, in the judgment
12 of the Board of Directors of the Bank is creditworthy but is
13 unable to obtain sufficient financing or insurance on reason-
14 able terms from other sources.

15 (c) OWNERSHIP OF SECURITIES BY BANK OR BANK
16 HOLDING COMPANY.—Notwithstanding any other provision
17 of law, but subject to the other provisions of this title, and
18 rules and regulations of the appropriate regulatory agencies,
19 any bank or bank holding company chartered or incorporated
20 within the United States and any corporation organized
21 under section 25(a) of the Federal Reserve Act may purchase
22 for its own account equity securities of an export trading
23 company which is licensed under this title: *Provided, how-*
24 *ever,* That total investment in export trading companies by
25 any bank or bank holding company may not exceed 10 per-

1 cent of its capital stock actually paid in and unimpaired plus
2 10 percent of its unimpaired surplus fund.

3 **SEC. 106. ANTITRUST.**

4 (a) **IN GENERAL.**—An export trading company licensed
5 under section 102 of this title is exempt from the application
6 of the antitrust laws except to the extent that the activities in
7 which it is engaged constitute or result in—

8 (1) a substantial restraint of trade within the
9 United States or a substantial restraint of the export
10 trade of a domestic competitor,

11 (2) an unfair method of competition against a do-
12 mestic competitor, or

13 (3) an unreasonable enhancement, stabilization, or
14 depression of prices within the United States of goods
15 or services of the class exported by that company.

16 (b) **INTERNATIONAL OBLIGATIONS.**—Subsection (a)
17 shall not apply to an export trading company licensed under
18 this title to the extent that its application would be inconsis-
19 ent with international obligations of the United States.

20 **SEC. 107. REGULATIONS.**

21 The Secretary shall promulgate such rules and regula-
22 tions as may be necessary to carry out the purposes of this
23 title. The Secretary shall consult with the Attorney General
24 prior to promulgating rules and regulations to carry out sec-
25 tions 103 and 106 of this title.

1 TITLE II—TAX TREATMENT OF EXPORT TRAD-
 2 ING COMPANIES AND THEIR SHAREHOLD-
 3 ERS

4 SEC. 201. ESTABLISHMENT AND TAXATION OF EXPORT TRAD-
 5 ING COMPANIES AND THEIR SHAREHOLDERS.

6 (a) IN GENERAL.—Chapter 1 of the Internal Revenue
 7 Code of 1954 (relating to normal taxes and surtaxes) is
 8 amended by adding at the end thereof the following new sub-
 9 chapter:

10 “Subchapter V—Export Trading Companies

“Sec. 1398. Definition of licensed export trading company.

“Sec. 1398A. Election by licensed export trading company.

“Sec. 1398B. Rules applicable to the taxation of electing licensed
 export trading company shareholders.

“Sec. 1398C. Special rules applicable to an electing licensed export
 trading company.

11 “SEC. 1398. DEFINITION OF LICENSED EXPORT TRADING COM-
 12 PANY.

13 “For purposes of this subchapter, the term ‘licensed
 14 export trading company’ means an export trading company
 15 licensed under section 104 of the Export Trading Company
 16 Act of 1979, the license of which is valid at all times during
 17 the taxable year of the company.

18 “SEC. 1398A. ELECTION BY LICENSED EXPORT TRADING COM-
 19 PANY.

20 “(a) ELIGIBILITY.—Except as provided in section
 21 1398C, a licensed export trading company may elect, in ac-

1 cordance with the provisions of this section, not to be subject
2 to the taxes imposed by this chapter.

3 “(b) EFFECT.—If a licensed export trading company
4 makes an election under subsection (a), then—

5 “(1) with respect to the taxable years of the
6 export trading company for which such election is in
7 effect, the company shall not be subject to the taxes
8 imposed by this chapter, and, with respect to such tax-
9 able years and all succeeding taxable years, the provi-
10 sions of section 1398E shall apply to that company,
11 and

12 “(2) with respect to each such taxable year, the
13 provisions of sections 1398B and 1398C shall apply to
14 the shareholders of the company.

15 “(c) WHERE AND HOW MADE.—An election under sub-
16 section (a) shall be made by an export trading company at
17 such time and in such manner as the Secretary shall pre-
18 scribe by regulations.

19 “(d) YEARS FOR WHICH EFFECTIVE.—An election
20 under subsection (a) shall be effective for the taxable year of
21 the export trading company for which it is made and for all
22 succeeding taxable years of the company, unless it is termi-
23 nated under subsection (f).

1 “(e) **TAXABLE YEAR.**—The taxable year of an export
2 trading company shall end on December 31 unless the Secre-
3 tary consents to a different taxable year.

4 “(f) **TERMINATION.**—The election of an export trading
5 company under subsection (a) shall terminate for any taxable
6 year during which it ceases to be a licensed export trading
7 company and for all succeeding taxable years. The election of
8 a licensed export trading company under subsection (a) may
9 be terminated at any other time with the consent of the Sec-
10 retary, effective for the first taxable year with respect to
11 which the Secretary consents and for all succeeding taxable
12 years.

13 **“SEC. 1398B. RULES APPLICABLE TO THE TAXATION OF**
14 **ELECTING LICENSED EXPORT TRADING COM-**
15 **PANY SHAREHOLDERS.**

16 “(a) **DISTRIBUTIONS TAXED AS ORDINARY INCOME.**—
17 Any amount distributed by an electing licensed export trad-
18 ing company shall be treated as a distribution to which sec-
19 tion 301(a) applies. Any amounts includable in the gross
20 income of any shareholder by reason of ownership of stock in
21 an electing licensed export trading company shall not be con-
22 sidered as a dividend for purposes of section 116.

23 “(b) **SPECIAL RULE FOR INVESTMENT CREDIT.**—The
24 investment credit of an electing licensed export trading com-
25 pany for any taxable year shall be allowed as a credit to the

1 shareholders of such company and the manner and to the
2 extent set forth in this subsection.

3 “(1) CREDIT.—There shall be apportioned among
4 the shareholders a credit equal to the amount each
5 shareholder would have received if, on each day of
6 such taxable year, there had been distributed pro rata
7 to the shareholders the electing licensed export trading
8 company’s net investment credit divided by the number
9 of days in the company’s taxable year.

10 “(2) NET INVESTMENT CREDIT.—For purposes of
11 this subsection, the term ‘net investment credit’ means
12 the investment credit of the electing licensed export
13 trading company for its taxable year less any tax from
14 recomputing of prior year’s investment credit in ac-
15 cordance with section 47.

16 “(3) RECAPTURE.—There shall be apportioned
17 among the shareholders of an electing licensed export
18 trading company, in the manner described in paragraph
19 (1), an additional tax equal to the excess of any tax
20 resulting from recomputing of prior year’s investment
21 credit in accordance with section 47 over the invest-
22 ment credit of the electing licensed export trading com-
23 pany for its taxable year.

24 “(c) SPECIAL RULE FOR FOREIGN TAX CREDIT.—

1 “(1) IN GENERAL.—For purposes of subpart A of
2 part III of subchapter N, a shareholder in an electing
3 licensed export trading company who receives a distri-
4 bution in any taxable year from such company shall be
5 deemed to have paid the same proportion of any
6 income, or profits, or excess profits taxes paid or
7 deemed to be paid by such electing licensed export
8 trading company to any foreign country or to any pos-
9 session of the United States, on or with respect to the
10 accumulated profits of such electing licensed export
11 trading company from which such distributions were
12 paid, which the amount of such distributions bears to
13 the amount of such accumulated profits in excess of
14 such income, war profits, and excess profits taxes
15 (other than those deemed paid).

16 “(2) DEFINITION OF ACCUMULATED PROFITS;
17 ACCOUNTING PERIODS.—For purposes of this subsec-
18 tion, the term ‘accumulated profits’ has the same
19 meaning as in section 902(c)(1), in the rules relating to
20 the application of the word ‘year’ with respect to ac-
21 counting periods of less than 1 year (set forth in sec-
22 tion 902(c)(2)) shall apply. For purposes of this para-
23 graph, the provisions of section 902(c) shall be applied
24 by substituting ‘electing licensed export trading compa-
25 ny’ for ‘foreign corporations’ each place it appears.

1 **"SEC. 1398C. SPECIAL RULES APPLICABLE TO AN ELECTING**
2 **LICENSED EXPORT TRADING COMPANY.**

3 "The provisions of section 482 (relating to allocation of
4 income and deductions among taxpayers) shall not apply with
5 respect to gross income, deductions, credits, or allowances
6 between an electing licensed export trading company and a
7 foreign subsidiary of such a company."

8 (b) **NET OPERATING LOSS DEDUCTION.**—Paragraph
9 (1) of section 172(b) of such Code (relating to net operating
10 loss carrybacks and carryovers) is amended by adding at the
11 end thereof the following new subparagraph:

12 "(I) in the case of an electing licensed export
13 trading company which has a net operating loss
14 for any taxable year, such loss shall not be a net
15 operating loss carryback to any taxable year pre-
16 ceding the year of such loss, which shall be a net
17 operating loss carryover to each of the 10 taxable
18 years following the year of such loss."

19 (c) **RETURN OF ELECTING LICENSED EXPORT TRAD-**
20 **ING COMPANY**—Subpart A of part III of subchapter A of
21 chapter 61 (relating to information on returns) is amended by
22 adding at the end thereof the following new section:

23 **"SEC. 6039C. RETURN OF ELECTING LICENSED EXPORT TRAD-**
24 **ING COMPANY.**

25 "Every electing licensed export trading company (as de-
26 fined in section 1398) which makes the election provided by

1 section 1398A shall make a return for each taxable year,
2 stating specifically the items of its gross income and the de-
3 ductions allowable by subtitle A, the amount of investment
4 credit or additional tax, as the case may be, the names and
5 addresses of all persons owning stock in the company at any
6 time during the taxable year, the number of shares of stock
7 owned by each shareholder at all times during the taxable
8 year, the amount of money and other property distributed by
9 the company during the taxable year to each shareholder, the
10 date of each such distribution, and such other information, for
11 the purposes of carrying out the provisions of subchapter V of
12 chapter 1, as the Secretary may by regulation prescribe. Any
13 return filed pursuant to this section shall, for purposes of
14 chapter 66 (relating to limitations), be treated as a return
15 filed by the company under section 6012. Every electing li-
16 censed export trading company shall file an annual report
17 with the Secretary summarizing its operations for such
18 year.”.

19 (d) CLERICAL AMENDMENTS.—

20 (1) The table of subchapters for chapter 1 of such
21 Code is amended by adding at the end thereof the fol-
22 lowing:

“SUBCHAPTER V. Export Trading Companies.”.

1 (2) The table of sections for subpart A of part III
2 of subchapter A of chapter 61 of such Code is amend-
3 ed by adding at the end thereof the following:

 “SEC. 6039C. Return of electing licensed export trading company.”.

4 **SEC. 201. EFFECTIVE DATE.**

5 The amendments made by this title shall apply with re-
6 spect to export trading companies licensed after December
7 31, 1979.

○

96TH CONGRESS
1ST SESSION

S. 1744

To amend the Export Trade Act to encourage increased utilization of the Act, to expand exemptions provided under the Act, to clarify United States Government policy with respect to the administration of the Act, to assist American exporters in international trade competition, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13 (legislative day, JUNE 21), 1979

Mr. STEVENSON (for Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Export Trade Act to encourage increased utilization of the Act, to expand exemptions provided under the Act, to clarify United States Government policy with respect to the administration of the Act, to assist American exporters in international trade competition, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. (a) FINDINGS.—The Congress finds and de-
4 clares that—

1 (1) in 1978 the United States suffered the largest
2 merchandise trade deficit in its history, amounting to
3 more than \$39,000,000,000 (cost, insurance, and
4 freight basis);

5 (2) the trade deficit has contributed to the decline
6 of the dollar on international currency markets and has
7 led to widespread public concern about the strength of
8 the dollar;

9 (3) the export sector of the American economy is
10 responsible for creating and maintaining millions of
11 jobs and for earning revenues which enable the United
12 States to import those goods and materials required by
13 the American economy;

14 (4) the United States share of total world exports
15 of manufactures has steadily eroded from 25.3 per
16 centum in 1960 to 21.3 per centum in 1970 and to
17 17.0 per centum in 1978; and

18 (5) United States laws regulating the ability of
19 domestic companies to combine in joint export efforts
20 are significantly more stringent than those in other
21 countries.

22 (b) PURPOSES.—It is the purpose of Congress in this
23 Act to encourage American exports through increased utili-
24 zation of the Export Trade Act by clarifying its provisions

1 and by making the export of services eligible for inclusion in
2 this Act.

3 SEC. 2. Section 1 of the Export Trade Act (40 Stat.
4 516; 15 U.S.C. 61) is amended to read as follows:

5 "As used in this Act:

6 "(1) 'Antitrust laws' means the laws defined as such in
7 sections 12 and 44 of title 15, United States Code, the Fed-
8 eral Trade Commission Act (15 U.S.C. 41-58), and other
9 laws of the United States in pari materia, including State
10 laws on antitrust and unfair methods of competition, and all
11 amendments to the foregoing.

12 "(2) 'Association', whenever used in sections 1 through
13 5 of this Act, means any combination, by contract or other
14 arrangement, of two or more persons who are citizens of the
15 United States or which are created under and exist pursuant
16 to the laws of any State or of the United States.

17 "(3) 'Export trade' means exclusively trade or com-
18 merce in manufactured goods and products, agricultural
19 goods and products, merchandise, or architectural, engineer-
20 ing, construction, training, financing, insurance, or project or
21 general management services or the licensing for distribution
22 or exhibition of motion pictures or television films or tapes or
23 similar services which are exported, or in the course of being
24 exported, from the United States to any foreign nation. The
25 term does not include—

1 “(A) the production, manufacture, or sale for con-
2 sumption or for resale within the United States of such
3 goods, products, merchandise, or services, or any act in
4 the course of such production, manufacture, or sale for
5 consumption or for resale;

6 “(B) any act, practice, agreement, or course of
7 conduct, the effect of which is to constitute a signifi-
8 cant restraint of trade or commerce, including foreign
9 commerce, in the United States; or

10 “(C) trade or commerce in patents, licenses, or
11 know-how except as necessary to the sale of such
12 goods, products, merchandise, or services.

13 “(4) ‘United States’ means any of the several States,
14 the District of Columbia, the Commonwealth of Puerto Rico,
15 the Virgin Islands, the Canal Zone, American Samoa, Guam,
16 and the Trust Territory of the Pacific Islands.

17 “(5) ‘Trade within the United States’, wherever used in
18 sections 1 through 5 of this Act, means trade or commerce
19 between two or more States.”.

20 SEC. 3. Section 2 of such Act is further amended by
21 adding at the end thereof the following two new subsections:

22 “(b) The Secretary of Commerce shall establish within
23 the Department of Commerce a program to promote and
24 maximize the formation of associations and the use of the

1 provisions of this Act in a manner consistent with this Act
2 and the antitrust laws.

3 “(c) The Secretary of Commerce, the Chairman of the
4 Federal Trade Commission, and the Attorney General of the
5 United States and their duly authorized representatives shall
6 meet and discuss periodically as necessary to avoid conflict-
7 ing positions regarding the oversight of associations and shall
8 meet periodically with members of the private sector to
9 review the policies of the Commission and Department of
10 Justice which affect the congressional policy of stimulating
11 American exports and improving the international trading
12 competitiveness of American exports.”.

13 SEC. 4. Section 5 of such Act is amended by inserting
14 “Department of Commerce” wherever the term “Federal
15 Trade Commission” appears.

1 (1) tens of thousands of American companies pro-
2 duce exportable goods or services but do not engage in
3 exporting;

4 (2) although the United States is the world's lead-
5 ing agricultural exporting nation, many farm products
6 are not marketed as widely and effectively abroad as
7 they could be through producer-owned export trading
8 companies;

9 (3) exporting requires extensive specialized knowl-
10 edge and skills and entails additional, unfamiliar risks
11 which present costs for which smaller producers cannot
12 realize economies of scale;

13 (4) export trade intermediaries, such as trading
14 companies, can achieve economies of scale and acquire
15 expertise enabling them to export goods and services
16 profitably, at low per unit cost to producers;

17 (5) the United States lacks well-developed export
18 trade intermediaries to package export trade services
19 at reasonable prices (exporting services are fragmented
20 into a multitude of separate functions; companies at-
21 tempting to offer comprehensive export trade services
22 lack financial leverage to reach a significant portion of
23 potential United States exporters);

(b) The purpose of this Act is to increase United States exports of products and services by encouraging more efficient provision of export trade services to American producers and suppliers.

14 DEFINITIONS

15 SEC. 3. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods produced in the United States or services produced in the United States exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, not more than 50 per centum of the fair market value of

1 which is attributable to articles imported into the
2 United States;

3 (3) the term "services produced in the United
4 States" includes, but is not limited to amusement, ar-
5 chitectural, automatic data processing, business, com-
6 munications, consulting, engineering, financial, insur-
7 ance, legal, management, repair, training, and trans-
8 portation services, not less than 50 per centum of the
9 fair market value of which is provided by United
10 States citizens or is otherwise attributable to the
11 United States;

12 (4) the term "export trade services" includes, but
13 is not limited to, international market research, adver-
14 tising, marketing, insurance, legal assistance, transpor-
15 tation, including trade documentation and freight for-
16 warding, communication and processing of foreign
17 orders to and for exporters and foreign purchasers,
18 warehousing, foreign exchange, and financing when
19 provided in order to facilitate the export of goods or
20 services produced in the United States;

21 (5) the term "export trading company" means a
22 company which does business under the laws of the
23 United States or any State and which is organized and
24 operated principally for the purposes of—

1 (A) exporting goods or services produced in
2 the United States; and

3 (B) facilitating the exportation of goods and
4 services produced in the United States by unaffil-
5 iated persons by providing one or more export
6 trade services;

7 (6) the term "United States" means the several
8 States of the United States, the District of Columbia,
9 the Commonwealth of Puerto Rico, the Virgin Islands,
10 American Samoa, Guam, the Commonwealth of the
11 Northern Mariana Islands, and the Trust Territory of
12 the Pacific Islands;

13 (7) the term "Secretary" means the Secretary of
14 Commerce; and

15 (8) the term "company" means any corporation,
16 partnership, association, or similar organization.

17 (b) The Secretary is authorized, by regulation, to further
18 define such terms consistent with this section.

19 FUNCTIONS OF THE SECRETARY OF COMMERCE

20 SEC. 4. The Secretary shall promote and encourage the
21 formation and operation of export trading companies by pro-
22 viding information and advice to interested persons. The As-
23 sistant Secretary of Commerce for Trade Promotion shall be
24 responsible for such activities and shall provide a referral

1 service to facilitate contact between producers of exportable
2 goods and services and firms offering export trade services.

3 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
4 BANK HOLDING COMPANIES, AND INTERNATIONAL
5 BANKING CORPORATIONS

6 SEC. 5. (a) For the purpose of this section—

7 (1) the term “banking organization” means any
8 State bank, national bank, bank holding company,
9 Edge Act Corporation, or Agreement Corporation;

10 (2) the term “State bank” means any bank which
11 is incorporated under the laws of any State, any terri-
12 tory of the United States, the Commonwealth of
13 Puerto Rico, Guam, American Samoa, the Common-
14 wealth of the Northern Mariana Islands, or the Virgin
15 Islands, or which is operating under the Code of Law
16 for the District of Columbia (except a national bank);

17 (3) the term “State member bank” means any
18 State bank which is a member of the Federal Reserve
19 System;

20 (4) the term “State nonmember insured bank”
21 means any State bank which is not a member of the
22 Federal Reserve System, but the deposits of which are
23 insured by the Federal Deposit Insurance Corporation;

1 (5) the term “bank holding company” has the
2 same meaning as in the Bank Holding Company Act of
3 1956;

4 (6) the term “Edge Act Corporation” means a
5 corporation organized under section 25(a) of the Fed-
6 eral Reserve Act;

7 (7) the term “Agreement Corporation” means a
8 corporation operating subject to section 25 of the Fed-
9 eral Reserve Act;

10 (8) the term “appropriate Federal banking
11 agency” means—

12 (A) the Comptroller of the Currency with re-
13 spect to a national bank;

14 (B) the Board of Governors of the Federal
15 Reserve System with respect to a State member
16 bank, bank holding company, Edge Act Corpora-
17 tion, or Agreement Corporation; and

18 (C) the Federal Deposit Insurance Corpora-
19 tion with respect to a State nonmember insured
20 bank;

21 (9) the term “capital and surplus” means paid in
22 and unimpaired capital and surplus, and includes undi-
23 vided profits and such other items as the appropriate
24 Federal banking agency may deem appropriate;

1 (10) an "affiliate" of a banking organization or
2 export trading company is a person who controls, is
3 controlled by, or is under common control with such
4 banking organization or export trading company;

5 (11) the term "control" means the power, directly
6 or indirectly, to vote more than 50 per centum of the
7 voting stock or other evidences of ownership of any
8 person, or otherwise having the power to direct or
9 cause the direction of the management or policies of
10 any person; and

11 (12) the term "export trading company" has the
12 same meaning as in section 3(5) of this Act, or any
13 company organized and operating principally for the
14 purpose of providing export trade services, as defined
15 in section 3(4) of this Act.

16 (b) Notwithstanding any prohibition, restriction, limita-
17 tion, condition, or requirement contained in any other provi-
18 sion of law, any banking organization, subject to the proce-
19 dures, limitations and conditions of this section, may acquire
20 and hold for its own account, either directly or indirectly, the
21 voting stock or other evidences of ownership of any export
22 trading company.

23 (c)(1) Any banking organization may invest not more
24 than 5 per centum of its capital and surplus in no more than
25 50 per centum of the voting stock or other evidences of own-

1 ership of any export trading company without obtaining the
2 prior approval of the appropriate Federal banking agency,
3 except that an Edge Act Corporation not engaged in bank-
4 ing, as defined by the Board of Governors of the Federal
5 Reserve System, may invest up to 25 per centum of its capi-
6 tal and surplus in no more than 50 per centum of the voting
7 stock or other evidences of ownership of any such company
8 without obtaining the prior approval of the Board of Gover-
9 nors of the Federal Reserve System.

10 (2) Any banking organization may, subject to the limita-
11 tions contained in subsection (e), make an investment in the
12 voting stock or other evidences of ownership of an export
13 trading company which does not comply with paragraph (1),
14 if it files an application with the appropriate Federal banking
15 agency to make such investment and within sixty days after
16 the receipt of such application, the appropriate Federal bank-
17 ing agency has not issued an order pursuant to subsection (d)
18 denying such proposed investment. The appropriate Federal
19 banking agency may require such information in any applica-
20 tion filed pursuant to this subsection as is reasonably neces-
21 sary to consider the factors specified in subsection (d). An
22 application is received for the purpose of this paragraph when
23 it has been accepted for processing by the appropriate Fed-
24 eral banking agency. Upon receipt of an application, the ap-
25 propriate Federal banking agency shall transmit a copy

1 thereof to the Secretary of Commerce and afford the Secre-
2 tary a reasonable time, not to exceed thirty days, to present
3 the views of the Department of Commerce on the application.
4 An investment may be made prior to the expiration of the
5 disapproval period if the appropriate Federal banking agency
6 issues written notice of its intent not to disapprove the
7 investment.

8 (3) Any banking organization whose proposed acquisi-
9 tion under paragraph (2) is disapproved by an order of the
10 appropriate Federal banking agency under subsection (d),
11 may obtain a review of such order in the United States Court
12 of Appeals within any circuit wherein such organization has
13 its principal place of business, or in the Court of Appeals for
14 the District of Columbia Circuit, by filing a notice of appeal
15 in such court within thirty days from the date of such order,
16 and simultaneously sending a copy of such notice by regis-
17 tered or certified mail to the appropriate Federal banking
18 agency. The appropriate Federal banking agency shall
19 promptly certify and file in such court the record upon which
20 the disapproval was based. The court shall set aside any
21 order found to be (A) arbitrary, capricious, an abuse of discre-
22 tion, or otherwise not in accordance with law; (B) contrary to
23 constitutional right, power, privilege or immunity; (C) in
24 excess of statutory jurisdiction, authority, or limitations, or

1 short of statutory right; or (D) not in accordance with the
2 procedures required by this section.

3 (d) The appropriate Federal banking agency may disap-
4 prove any investment for which an application is filed under
5 subsection (c)(2) if it finds that the export-related benefits of
6 such acquisition are clearly outweighed in the public interest
7 by adverse competitive, financial, managerial, or other bank-
8 ing factors associated with the particular acquisition. In
9 weighing the export-related benefits of a particular proposal,
10 the appropriate Federal banking agency shall give due con-
11 sideration to the views of the Department of Commerce fur-
12 nished pursuant to subsection (c)(2), and shall give special
13 weight to any application that will open new markets for
14 United States goods and services abroad, or that will involve
15 small- or medium-size businesses or agricultural concerns
16 new to the export market. Any disapproval order issued
17 under this section must contain a statement of the reasons for
18 disapproval.

19 (e)(1) No banking organization holding voting stock or
20 other evidences of ownership of any export trading company
21 may extend credit or cause any affiliate to extend credit to
22 any export trading company or to customers of such company
23 on terms more favorable than those afforded similar borrow-
24 ers in similar circumstances.

1 (2) Except as provided in subsection (c)(1), no banking
2 organization may, in the aggregate, invest in excess of 10 per
3 centum of its capital and surplus in the stock or other
4 evidences of ownership of one or more export trading
5 companies.

6 (f) The appropriate Federal banking agencies may adopt
7 such rules and regulations and require such reports as are
8 necessary to enable them to carry out the provisions of this
9 section and prevent evasions thereof.

10 INITIAL INVESTMENTS AND OPERATING EXPENSES

11 SEC. 6. (a) The Export-Import Bank of the United
12 States is authorized to provide loans or guarantees to export
13 trading companies to help such companies meet operating ex-
14 penses and make investments in facilities related to the
15 export of goods or services produced in the United States, or
16 related to the provision of export trade services, if in the
17 judgment of the Board of Directors of the Bank—

18 (1) the loans or guarantees would facilitate ex-
19 ports which would not otherwise occur;

20 (2) the company is unable to obtain sufficient fi-
21 nancing on reasonable terms from other sources; and

22 (3) there is reasonable assurance of repayment.

23 (b) Loans and guarantees under this section shall be
24 used only for the financing of exports and export trade serv-
25 ices. The amount of loans and guarantees to any single con-

1 cern in any year may not exceed 50 per centum of such con-
2 cern's annual operating expenses, as determined by the
3 Board.

4 (c) The bank shall not make loans or guarantees availa-
5 ble to any one company in excess of \$1,000,000 in any
6 twelve-month period, or \$2,500,000 in total. The aggregate
7 amount of loans or guarantees outstanding at any time under
8 this section may not exceed \$100,000,000. The authority
9 granted by this section shall expire five years after the date
10 of enactment of this Act.

11 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
12 INVENTORY

13 SEC. 7. The Export-Import Bank of the United States
14 is authorized and directed to provide guarantees for up to 80
15 per centum of the principal of loans extended by financial
16 institutions or other private creditors to export trading com-
17 panies as defined in section 3(5) of this Act, or to exporters,
18 for periods up to one year when in the judgment of the Board
19 of Directors—

20 (1) such guarantees would facilitate expansion of
21 exports which would not otherwise occur;

22 (2) the guarantees are essential to enable the
23 export trading company or exporter to receive ade-
24 quate credit to conduct normal business operations; and

1 (3) the guarantees are adequately secured by
2 export accounts receivable or inventories of exportable
3 goods.

4 Guarantees provided under the authority of this section shall
5 be subject to limitations contained in annual appropriations
6 Acts.

7 ELIGIBILITY OF STATE OR LOCAL GOVERNMENT-OWNED
8 EXPORT TRADING COMPANIES

9 SEC. 8. Nothing in this Act preempts or otherwise re-
10 stricts, prevents, or discourages any State or local govern-
11 ment, or other governmental authority from organizing,
12 owning, or otherwise participating in or supporting export
13 trading companies. In carrying out the authority provided by
14 sections 6 and 7, the Export-Import Bank of the United
15 States shall not deny eligibility to an export trading company
16 on the basis of ownership of such company by a State or local
17 government or other governmental authority.

18 ELIGIBILITY UNDER THE WEBB-POMERENE ACT

19 SEC. 9. Section 2 of the Webb-Pomerene Act (15
20 U.S.C. 62) is amended—

21 (1) by inserting after “engaged solely in such
22 export trade,” the following: “or with respect solely to
23 its export trade activities, any corporation which is an
24 export trading company as defined in section 3(5) of
25 the Export Trading Company Act of 1980,”; and

1 (2) by inserting “or export trading company” after
2 “association” each place, after the first, it appears.

3 APPLICATION OF DISC RULES TO EXPORT TRADING

4 COMPANIES

5 SEC. 10. (a) Paragraph (3) of section 992(d) of the In-
6 ternal Revenue Code of 1954 (relating to ineligible corpora-
7 tions) is amended by inserting before the comma at the end
8 thereof the following: “(other than a financial institution
9 which is a banking organization as defined in section 5(a)(1)
10 of the Export Trading Company Act of 1980 investing in the
11 voting stock of an export trading company (as defined in sec-
12 tion 3(5) of the Export Trading Act of 1980) in accordance
13 with the provisions of section 5 of such Act)”.

(b) Paragraph (1) of section 993(a) of the Internal Revenue Code of 1954 (relating to qualified export receipts of a DISC) is amended—

17 (1) by striking out “and” at the end of subpara-
18 graph (G),

19 (2) by striking out the period at the end of sub-
20 paragraph (H) and inserting in lieu thereof "and", and

21 (3) by adding at the end thereof the following new
22 subparagraph:

“(I) in the case of a DISC which is an
export trading company (as defined in section 3(5)
of the Export Trading Company Act of 1980), or

1 which is a subsidiary of such a company, gross re-
2 ceipts from the export of services produced in the
3 United States (as defined in section 3(3) of such
4 Act) or from export trade services (as defined in
5 section 3(4) of such Act).”.

6 (c) The Secretary of Commerce, after consultation with
7 the Secretary of the Treasury, shall develop, prepare, and
8 distribute to interested parties, including potential exporters,
9 information concerning the manner in which an export trad-
10 ing company can utilize the provisions of part IV of sub-
11 chapter N of chapter 1 of the Internal Revenue Code of 1954
12 (relating to domestic international sales corporations), and
13 any advantages or disadvantages which may reasonably be
14 expected from the election of DISC status or the establish-
15 ment of a subsidiary corporation which is a DISC.

16 (d) The amendments made by this section shall apply
17 with respect to taxable years beginning after December 31,
18 1980.

19 SUBCHAPTER S STATUS FOR EXPORT TRADING

20 COMPANIES

21 SEC. 11. (a) Paragraph (1) of section 1371(a) of the
22 Internal Revenue Code of 1954 (relating to the definition of a
23 small business corporation) is amended by inserting “, except
24 in the case of the shareholders of an export trading company
25 (as defined in section 3(5) of the Export Trading Company

1 Act of 1980) if such shareholders are otherwise small busi-
2 ness corporations for the purpose of this subchapter," after
3 "shareholders".

4 (b) The first sentence of section 1372(e)(4) of such Code
5 (relating to foreign income) is amended by inserting " , other
6 than an export trading company," after "small business
7 corporation".

8 (c) The amendments made by this section shall apply
9 with respect to taxable years beginning after December 31,
10 1980.



Calendar No. 785

96TH CONGRESS
2D SESSION

S. 2718

[Report No. 96-735]

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, JANUARY 3), 1980

Mr. STEVENSON, from the Committee on Banking, Housing, and Urban Affairs, reported the following bill; which was read twice and ordered to be placed on the calendar

A BILL

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 TITLE I—EXPORT TRADING COMPANIES

2 SHORT TITLE

3 SEC. 101. This title may be cited as the “Export Trad-
4 ing Company Act of 1980”.

5 FINDINGS

6 SEC. 102. (a) The Congress finds and declares that—

7 (1) tens of thousands of American companies pro-
8 duce exportable goods or services but do not engage in
9 exporting;

10 (2) although the United States is the world’s lead-
11 ing agricultural exporting nation, many farm products
12 are not marketed as widely and effectively abroad as
13 they could be through producer-owned export trading
14 companies;

15 (3) exporting requires extensive specialized knowl-
16 edge and skills and entails additional, unfamiliar risks
17 which present costs for which smaller producers cannot
18 realize economies of scale;

19 (4) export trade intermediaries, such as trading
20 companies, can achieve economies of scale and acquire
21 expertise enabling them to export goods and services
22 profitably, at low per unit cost to producers;

23 (5) the United States lacks well-developed export
24 trade intermediaries to package export trade services
25 at reasonable prices (exporting services are fragmented

1 into a multitude of separate functions; companies at-
2 tempting to offer comprehensive export trade services
3 lack financial leverage to reach a significant portion of
4 potential United States exporters);

5 (6) State and local government activities which
6 initiate, facilitate, or expand export of products and
7 services are an important and irreplaceable source for
8 expansion of total United States exports, as well as for
9 experimentation in the development of innovative
10 export programs keyed to local, State, and regional
11 economic needs;

12 (7) the development of export trading companies
13 in the United States has been hampered by insular
14 business attitudes and by Government regulations; and

15 (8) if United States export trading companies are
16 to be successful in promoting United States exports
17 and in competing with foreign trading companies, they
18 must be able to draw on the resources, expertise, and
19 knowledge of the United States banking system, both
20 in the United States and abroad.

21 (b) The purpose of this Act is to increase United States
22 exports of products and services by encouraging more effi-
23 cient provision of export trade services to American pro-
24 ducers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term “export trade” means trade or commerce in goods sourced in the United States or services produced in the United States exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term “goods produced in the United States” means tangible property manufactured, produced, grown, or extracted in the United States, the cost of the imported raw materials and components thereof shall not exceed 50 per centum of the sales price;

(3) the term “services produced in the United States” includes, but is not limited to accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services, not less than 50 per centum of the sales or billings of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term “export trade services” includes, but is not limited to, consulting, international market re-

1 search, advertising, marketing, insurance, product re-
2 search and design, legal assistance, transportation, in-
3 cluding trade documentation and freight forwarding,
4 communication and processing of foreign orders to and
5 for exporters and foreign purchasers, warehousing, for-
6 eign exchange, and financing when provided in order to
7 facilitate the export of goods or services produced in
8 the United States;

9 (5) the term "export trading company" means a
10 company which does business under the laws of the
11 United States or any State and which is organized and
12 operated principally for the purposes of—

13 (A) exporting goods or services produced in
14 the United States; and

15 (B) facilitating the exportation of goods and
16 services produced in the United States by unaffil-
17 iated persons by providing one or more export
18 trade services;

19 (6) the term "United States" means the several
20 States of the United States, the District of Columbia,
21 the Commonwealth of Puerto Rico, the Virgin Islands,
22 American Samoa, Guam, the Commonwealth of the
23 Northern Mariana Islands, and the Trust Territory of
24 the Pacific Islands;

1 (7) the term "Secretary" means the Secretary of
2 Commerce; and

3 (8) the term "company" means any corporation,
4 partnership, association, or similar organization.

5 (b) The Secretary is authorized, by regulation, to further
6 define such terms consistent with this section.

7 FUNCTIONS OF THE SECRETARY OF COMMERCE

8 SEC. 104. The Secretary shall promote and encourage
9 the formation and operation of export trading companies by
10 providing information and advice to interested persons and by
11 facilitating contact between producers of exportable goods
12 and services and firms offering export trade services.

13 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
14 BANK HOLDING COMPANIES, AND INTERNATIONAL
15 BANKING CORPORATIONS

16 SEC. 105. (a) For the purpose of this section—

17 (1) the term "banking organization" means any
18 State bank, national bank, Federal savings bank, bank-
19 ers' bank, bank holding company, Edge Act Corpora-
20 tion, or Agreement Corporation;

21 (2) the term "State bank" means any bank which
22 is incorporated under the laws of any State, any terri-
23 tory of the United States, the Commonwealth of
24 Puerto Rico, Guam, American Samoa, the Common-
25 wealth of the Northern Mariana Islands, or the Virgin

1 Islands, or any bank (except a national bank) which is
2 operating under the Code of Law for the District of
3 Columbia (hereinafter referred to as a "District bank");

4 (3) the term "State member bank" means any
5 State bank, including a bankers' bank, which is a
6 member of the Federal Reserve System;

7 (4) the term "State nonmember insured bank"
8 means any State bank, including a bankers' bank,
9 which is not a member of the Federal Reserve System,
10 but the deposits of which are insured by the Federal
11 Deposit Insurance Corporation;

12 (5) the term "bankers' bank" means any bank
13 which (A) is organized solely to do business with other
14 financial institutions, (B) is owned primarily by the fi-
15 nancial institutions with which it does business, and (C)
16 does not do business with the general public;

17 (6) the term "bank holding company" has the
• 18 same meaning as in the Bank Holding Company Act of
19 1956;

20 (7) the term "Edge Act Corporation" means a
21 corporation organized under section 25(a) of the Fed-
22 eral Reserve Act;

23 (8) the term "Agreement Corporation" means a
24 corporation operating subject to section 25 of the Fed-
25 eral Reserve Act;

1 (9) the term "appropriate Federal banking
2 agency" means—

3 (A) the Comptroller of the Currency with re-
4 spect to a national bank or any District bank;

5 (B) the Board of Governors of the Federal
6 Reserve System with respect to a State member
7 bank, bank holding company, Edge Act Corpora-
8 tion, or Agreement Corporation;

9 (C) the Federal Deposit Insurance Corpora-
10 tion with respect to a State nonmember insured
11 bank except a District bank; and

12 (D) the Federal Home Loan Bank Board
13 with respect to a Federal savings bank.

14 In any situation where the banking organization hold-
15 ing or making an investment in an export trading com-
16 pany is a subsidiary of another banking organization
17 which is subject to the jurisdiction of another agency,
18 and some form of agency approval or notification is re-
19 quired, such approval or notification need only be ob-
20 tained from or made to, as the case may be, the appro-
21 priate Federal banking agency for the banking organi-
22 zation making or holding the investment in the export
23 trading company;

24 (10) the term "capital and surplus" means paid in
25 and unimpaired capital and surplus, and includes un-

divided profits and such other items as the appropriate Federal banking agency may deem appropriate;

(11) an "affiliate" of a banking organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company;

(12) the terms "control" and "subsidiary" shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956; and

(13) the term "export trading company" has the same meaning as in section 103(5) of this Act, or means any company organized and operating principally for the purpose of providing export trade services, as defined in section 103(4) of this Act.

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any other law, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not en-

1 gaged in banking) in the voting stock or other evidences of
2 ownership of one or more export trading companies. A bank-
3 ing organization may—

4 (A) invest up to an aggregate amount of
5 \$10,000,000 in one or more export trading companies
6 without the prior approval of the appropriate Federal
7 banking agency, if such investment does not cause an
8 export trading company to become a subsidiary of the
9 investing banking organization; and

10 (B) make investments in excess of an aggregate
11 amount of \$10,000,000 in one or more export trading
12 companies, or make any investment or take any other
13 action which causes an export trading company to
14 become a subsidiary of the investing banking organiza-
15 tion or which will cause more than 50 per centum of
16 the voting stock of an export trading company to be
17 owned or controlled by banking organizations, only
18 with the prior approval of the appropriate Federal
19 banking agency.

20 Any banking organization which makes an investment under
21 authority of clause (A) of the preceding sentence shall
22 promptly notify the appropriate Federal banking agency of
23 such investment and shall file such reports on such invest-
24 ment as such agency may require. If, after receipt of any
25 such notification, the appropriate Federal banking agency de-

1 terminates, after notice and opportunity for hearing, that the
2 export trading company is a subsidiary of the investing bank-
3 ing organization, it shall have authority to disapprove the
4 investment or impose conditions on such investment under
5 authority of subsection (d). In furtherance of such authority,
6 the appropriate Federal banking agency may require divesti-
7 ture of any voting stock or other evidences of ownership pre-
8 viously acquired, and may impose conditions necessary for
9 the termination of any controlling relationship.

10 (2) If a banking organization proposes to make any in-
11 vestment or engage in any activity included within the fol-
12 lowing two subparagraphs, it must give the appropriate Fed-
13 eral banking agency sixty days prior written notice before it
14 makes such investment or engages in such activity:

15 (A) any additional investment in an export trading
16 company subsidiary; or

17 (B) the engagement by any export trading
18 company subsidiary in any line of activity, including
19 specifically the taking of title to goods, wares, mer-
20 chandise, or commodities, if such activity was not dis-
21 closed in any prior application for approval.

22 During the notification period provided under this paragraph,
23 the appropriate Federal banking agency may, by written
24 notice, disapprove the proposed investment or activity or
25 impose conditions on such investment or activity under au-

1 thority of subsection (d). An additional investment or activity
2 covered by this paragraph may be made or engaged in, as the
3 case may be, prior to the expiration of the notification period
4 if the appropriate Federal banking agency issues written
5 notice of its intent not to disapprove.

6 (3) In the event of the failure of the appropriate Federal
7 banking agency to act on any application for approval under
8 paragraph (1)(B) of this subsection within the ninety-day
9 period which begins on the date the application has been ac-
10 cepted for processing by the appropriate Federal banking
11 agency, the application shall be deemed to have been
12 granted. In the event of the failure of the appropriate Federal
13 banking agency either to disapprove or to impose conditions
14 on any investment or activity subject to the prior notification
15 requirements of paragraph (2) of this subsection within the
16 sixty-day period provided therein, such period beginning on
17 the date the notification has been received by the appropriate
18 Federal banking agency, such investment or activity may be
19 made or engaged in, as the case may be, any time after the
20 expiration of such period.

21 (c) The following limitations apply to export trading
22 companies and the investments in such companies by banking
23 organizations:

24 (1) The name of any export trading company shall
25 not be similar in any respect to that of a banking orga-

1 nization that owns any of its voting stock or other evi-
2 dences of ownership.

3 (2) The total historical cost of the direct and indi-
4 rect investments by a banking organization in an
5 export trading company combined with extensions of
6 credit by the banking organization and its direct and
7 indirect subsidiaries to such export trading company
8 shall not exceed 10 per centum of the banking organi-
9 zation's capital and surplus.

10 (3) A banking organization that owns any voting
11 stock or other evidences of ownership of an export
12 trading company shall terminate its ownership of such
13 stock if the export trading company takes positions in
14 commodities or commodities contracts other than as
15 may be necessary in the course of its business oper-
16 ations.

17 (4) No banking organization holding voting stock
18 or other evidences of ownership of any export trading
19 company may extend credit or cause any affiliate to
20 extend credit to any export trading company or to cus-
21 tomers of such company on terms more favorable than
22 those afforded similar borrowers in similar circum-
23 stances, and such extension of credit shall not involve
24 more than the normal risk of repayment or present
25 other unfavorable features.

1 (d)(1) In the case of every application under subsection
2 (b)(1)(B) of this section, the appropriate Federal banking
3 agency shall take into consideration the financial and man-
4 agerial resources, competitive situation, and future prospects
5 of the banking organization and export trading company con-
6 cerned, and the benefits of the proposal to United States
7 business, industrial, and agricultural concerns, and to improv-
8 ing United States competitiveness in world markets. The
9 appropriate Federal banking agency may not approve any
10 investment for which an application has been filed under
11 subsection (b)(1)(B) if it finds that the export benefits of such
12 proposal are outweighed in the public interest by any adverse
13 financial, managerial, competitive, or other banking factors
14 associated with the particular investment. Any disapproval
15 order issued under this section must contain a statement of
16 the reasons for disapproval.

17 (2) In approving any application submitted under sub-
18 section (b)(1)(B), the appropriate Federal banking agency
19 may impose such conditions which, under the circumstances
20 of such case, it may deem necessary (A) to limit a banking
21 organization's financial exposure to an export trading compa-
22 ny, or (B) to prevent possible conflicts of interest or unsafe or
23 unsound banking practices. With respect to the taking of title
24 to goods, wares, merchandise, or commodities by any export
25 trading company subsidiary of a banking organization, the

1 appropriate Federal banking agencies shall establish stand-
2 ards designed to ensure against any unsafe or unsound prac-
3 tices that could adversely affect a controlling banking organi-
4 zation investor, including specifically practices pertaining to
5 an export trading company subsidiary's holding of title to in-
6 ventory. Such standards should be established no later than
7 two hundred and seventy days after enactment of this Act,
8 and opportunity should be provided for public comment and
9 participation in developing such standards. If an export trad-
10 ing company subsidiary of a banking organization proposes to
11 take title to goods, wares, merchandise, or commodities in a
12 manner which does not conform to such standards, or prior to
13 the establishment of such standards, it may only do so with
14 the prior approval of the appropriate Federal banking agency
15 and subject to such conditions and limitations as it may
16 impose under this paragraph.

17 (3) In determining whether to impose any condition
18 under the preceding paragraph (2), or in imposing such condi-
19 tion, the appropriate Federal banking agency must give due
20 consideration to the size of the banking organization and
21 export trading company involved, the degree of investment
22 and other support to be provided by the banking organization
23 to the export trading company, and the identity, character,
24 and financial strength of any other investors in the export
25 trading company. The appropriate Federal banking agency

1 shall not impose any conditions or set standards for the
2 taking of title which unnecessarily disadvantage, restrict or
3 limit export trading companies in competing in world markets
4 or in achieving the purposes of section 102 of this Act. In
5 particular, in setting standards for the taking of title under
6 the preceding paragraph (2), the appropriate Federal banking
7 agencies shall give special weight to the need to take title in
8 certain kinds of trade transactions, such as international
9 barter transactions.

10 (4) Notwithstanding any other provision of this Act, the
11 appropriate Federal banking agency may, whenever it has
12 reasonable cause to believe that the ownership or control of
13 any investment in an export trading company constitutes a
14 serious risk to the financial safety, soundness, or stability of
15 the banking organization and is inconsistent with sound bank-
16 ing principles or with the purposes of this Act or with the
17 Financial Institutions Supervisory Act of 1966, order the
18 banking organization, after due notice and opportunity for
19 hearing, to terminate (within one hundred and twenty days or
20 such longer period as the Board may direct in unusual cir-
21 cumstances) its investment in the export trading company.

22 (5) On or before two years after enactment of this Act,
23 the appropriate Federal banking agencies shall jointly report
24 to the Committee on Banking, Housing, and Urban Affairs of
25 the Senate and the Committee on Banking, Finance and

1 Urban Affairs of the House of Representatives their recom-
2 mendations with respect to the implementation of this sec-
3 tion, their recommendations on any changes in United States
4 law to facilitate the financing of United States exports, espe-
5 cially by smaller and medium-sized business concerns, and
6 their recommendations on the effects of ownership of United
7 States banks by foreign banking organizations affiliated with
8 trading companies doing business in the United States.

9 (e)(1) Any party aggrieved by an order of an appropriate
10 Federal banking agency under this section may obtain a
11 review of such order in the United States court of appeals
12 within any circuit wherein such organization has its principal
13 place of business, or in the court of appeals for the District of
14 Columbia Circuit, by filing a notice of appeal in such court
15 within thirty days from the date of such order, and simulta-
16 neously sending a copy of such notice by registered or certi-
17 fied mail to the appropriate Federal banking agency. The ap-
18 propriate Federal banking agency shall promptly certify and
19 file in such court the record upon which the order was based.
20 The court shall set aside any order found to be (A) arbitrary,
21 capricious, an abuse of discretion, or otherwise not in accord-
22 ance with law; (B) contrary to constitutional right, power,
23 privilege or immunity; or, (C) in excess of statutory jurisdic-
24 tion, authority, or limitations, or short of statutory right; or
25 (D) without observance of procedure required by law. Except

1 for violations of subsection (b)(3) of this section, the court
2 shall remand for further consideration by the appropriate
3 Federal banking agency any order set aside solely for proce-
4 dural errors and may remand for further consideration by the
5 appropriate Federal banking agency any order set aside for
6 substantive errors. Upon remand, the appropriate Federal
7 banking agency shall have no more than sixty days from date
8 of issuance of the court's order to cure any procedural error
9 or reconsider its prior order. If the agency fails to act within
10 this period, the application or other matter subject to review
11 shall be deemed to have been granted as a matter of law.

12 (f)(1) The appropriate Federal banking agencies are au-
13 thorized and empowered to issue such rules, regulations, and
14 orders, to require such reports, to delegate such functions,
15 and to conduct such examinations of subsidiary export trad-
16 ing companies, as each of them may deem necessary in order
17 to perform their respective duties and functions under this
18 section and to administer and carry out the provisions and
19 purposes of this section and prevent evasions thereof.

20 (2) In addition to any powers, remedies, or sanctions
21 otherwise provided by law, compliance with the requirements
22 imposed under this section may be enforced under section 8
23 of the Federal Deposit Insurance Act by any appropriate
24 Federal banking agency defined in that Act.

1 INITIAL INVESTMENTS AND OPERATING EXPENSES

2 SEC. 106. (a) The Economic Development Administra-
3 tion and the Small Business Administration are directed, in
4 their consideration of applications by export trading compa-
5 nies for loans and guarantees, including applications to make
6 new investments related to the export of goods or services
7 produced in the United States and to meet operating ex-
8 penses, to give special weight to export-related benefits, in-
9 cluding opening new markets for United States goods and
10 services abroad and encouraging the involvement of small or
11 medium-size businesses or agricultural concerns in the export
12 market.

(b) There are authorized to be appropriated as necessary to meet the purposes of this section, \$20,000,000 for each fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts appropriated pursuant to the authority of this subsection shall be in addition to amounts appropriated under the authority of other Acts.

19 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
20 INVENTORY

21 SEC. 107. The Export-Import Bank of the United
22 States is authorized and directed to establish a program to
23 provide guarantees for loans extended by financial institu-
24 tions or other private creditors to export trading companies
25 as defined in section 103(5) of this Act, or to other exporters,

1 when such loans are secured by export accounts receivable or
2 inventories of exportable goods, and when in the judgment of
3 the Board of Directors—

4 (1) the private credit market is not providing ade-
5 quate financing to enable otherwise creditworthy
6 export trading companies or exporters to consummate
7 export transactions; and

8 (2) such guarantees would facilitate expansion of
9 exports which would not otherwise occur.

10 Guarantees provided under the authority of this section shall
11 be subject to limitations contained in annual appropriations
12 Acts.

13 TITLE II—EXPORT TRADE ASSOCIATIONS

14 SHORT TITLE

15 SEC. 201. This title may be cited as the “Export Trade
16 Association Act of 1980”.

17 FINDINGS; DECLARATION OF PURPOSE

18 SEC. 202. (a) FINDINGS.—The Congress finds and de-
19 clares that—

20 (1) the exports of the American economy are re-
21 sponsible for creating and maintaining one out of every
22 nine manufacturing jobs in the United States and for
23 generating one out of every \$7 of total United States
24 goods produced;

1 (2) exports will play an even larger role in the
2 United States economy in the future in the face of
3 severe competition from foreign government-owned and
4 subsidized commercial entities;

5 (3) between 1968 and 1977 the United States
6 share of total world exports fell from 19 per centum to
7 13 per centum;

8 (4) trade deficits contribute to the decline of the
9 dollar on international currency markets, fueling infla-
10 tion at home;

11 (5) service-related industries are vital to the well-
12 being of the American economy inasmuch as they
13 create jobs for seven out of every ten Americans, pro-
14 vide 65 per centum of the Nation's gross national
15 product, and represent a small but rapidly rising per-
16 centage of United States international trade;

17 (6) small and medium-sized firms are prime bene-
18 ficiaries of joint exporting, through pooling of technical
19 expertise, help in achieving economies of scale, and as-
20 sistance in competing effectively in foreign markets;
21 and

22 (7) the Department of Commerce has as one of its
23 responsibilities the development and promotion of
24 United States exports.

(b) PURPOSE.—It is the purpose of this Act to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

10 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61-66)
11 is amended by striking out the first section (15 U.S.C. 61)
12 and inserting in lieu thereof the following:

13 "SECTION 1. DEFINITIONS.

14 “As used in this Act—

15 “(1) EXPORT TRADE.—The term ‘export trade’
16 means trade or commerce in goods, wares, merchan-
17 dise, or services exported, or in the course of being ex-
18 ported from the United States or any territory thereof
19 to any foreign nation.

20 “(2) **SERVICE.**—The term ‘service’ means intangi-
21 ble economic output, including, but not limited to—

22 “(A) business, repair, and amusement
23 services;

24 “(B) management, legal, engineering, archi-
25 tectural, and other professional services; and

1 “(C) financial, insurance, transportation, and
2 communication services.

3 “(3) EXPORT TRADE ACTIVITIES.—The term
4 ‘export trade activities’ includes activities or agree-
5 ments in the course of export trade.

6 “(4) TRADE WITHIN THE UNITED STATES.—The
7 term ‘trade within the United States’ whenever used in
8 this Act means trade or commerce among the several
9 States or in any territory of the United States, or in
10 the District of Columbia, or between any such territory
11 and another, or between any such territory or territo-
12 ries and any State or States or the District of Colum-
13 bia, or between the District of Columbia and any State
14 or States.

15 “(5) ASSOCIATION.—The term ‘association’
16 means any combination, by contract or other arrange-
17 ment, of persons who are citizens of the United States,
18 partnerships which are created under and exist pursu-
19 ant to the laws of any State or of the United States, or
20 corporations which are created under and exist pursu-
21 ant to the laws of any State or of the United States.

22 “(6) EXPORT TRADING COMPANY.—The term
23 ‘export trading company’ means an export trading
24 company as defined in section 103(5) of the Export
25 Trading Company Act of 1980.

1 “(7) ANTITRUST LAWS.—The term ‘antitrust
2 laws’ means the antitrust laws defined in the first sec-
3 tion of the Clayton Act (15 U.S.C. 12) and section 4
4 of the Federal Trade Commission Act (15 U.S.C. 44),
5 and any State antitrust or unfair competition law.

6 “(8) SECRETARY.—The term ‘Secretary’ means
7 the Secretary of Commerce.

8 “(9) ATTORNEY GENERAL.—The term ‘Attorney
9 General’ means the Attorney General of the United
10 States.

11 “(10) COMMISSION.—The term ‘Commission’
12 means the Federal Trade Commission.”.

13 ANTITRUST EXEMPTION

14 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61-66)
15 is amended by striking out section 2 (15 U.S.C. 62) and in-
16 serting in lieu thereof the following:

17 “SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

18 “(a) ELIGIBILITY.—The export trade, export trade ac-
19 tivities, and methods of operation of any association, entered
20 into for the sole purpose of engaging in export trade, and
21 engaged in or proposed to be engaged in such export trade,
22 and the export trade and methods of operation of any export
23 trading company, that—

24 “(1) serve to preserve or promote export trade;

1 “(2) result in neither a substantial lessening of
2 competition or restraint of trade within the United
3 States nor a substantial restraint of the export trade of
4 any competitor of such association;

5 “(3) do not unreasonably enhance, stabilize, or de-
6 press prices within the United States of the goods,
7 wares, merchandise, or services of the class exported
8 by such association;

9 “(4) do not constitute unfair methods of competi-
10 tion against competitors engaged in the export trade of
11 goods, wares, merchandise, or services of the class ex-
12 ported by such association;

13 “(5) do not include any act which results, or may
14 reasonably be expected to result, in the sale for con-
15 sumption or resale within the United States of the
16 goods, wares, merchandise, or services exported by the
17 association or export trading company or its members;
18 and

19 “(6) do not constitute trade or commerce in the
20 licensing of patents, technology, trademarks, or know-
21 how, except as incidental to the sale of the goods,
22 wares, merchandise, or services exported by the associ-
23 ation or export trading company or its members

1 shall, when certified according to the procedures set forth in
2 this Act, be eligible for the exemption provided in subsection
3 (b).

4 “(b) EXEMPTION.—An association or an export trading
5 company and its members with respect to its export trade,
6 export trade activities and methods of operation are exempt
7 from the operation of the antitrust laws as relates to their
8 respective export trade, export trade activities or methods of
9 operation that are specified in a certificate issued according
10 to the procedures set forth in the Act, carried out in conform-
11 ity with the provisions, terms, and conditions prescribed in
12 such certificate and engaged in during the period in which
13 such certificate is in effect. The subsequent revocation or in-
14 validation of such certificate shall not render the association
15 or its members or an export trading company or its members,
16 liable under the antitrust laws for such trade, export trade
17 activities, or methods of operation engaged in during such
18 period.

19 “(c) DISAGREEMENT OF ATTORNEY GENERAL OR
20 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
21 Act, the Attorney General or Commission has formally ad-
22 vised the Secretary of disagreement with his determination to
23 issue a proposed certificate, and the Secretary has nonethe-
24 less issued such proposed certificate or an amended certifi-
25 cate, the exemption provided by this section shall not be

1 effective until thirty days after the issuance of such
2 certificate.”.

3 **AMENDMENT OF SECTION 3**

4 **SEC. 205. (a) CONFORMING CHANGES IN STYLE.**—The
5 Webb-Pomerene Act (15 U.S.C. 61–66) is amended—

6 (1) by inserting immediately before section 3 (15
7 U.S.C. 63) the following:

8 **“SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-**
9 **ATIONS PERMITTED.”,**

10 (2) by striking out “SEC. 3. That nothing” in sec-
11 tion 3 and inserting in lieu thereof “Nothing”.

12 **ADMINISTRATION: ENFORCEMENT: REPORTS**

13 **SEC. 206. (a) IN GENERAL.**—The Webb-Pomerene Act
14 (15 U.S.C. 61–66) is amended by striking out sections 4 and
15 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
16 following sections:

17 **“SEC. 4. CERTIFICATION.**

18 **“(a) PROCEDURE FOR APPLICATION.**—Any associ-
19 ation, company, or export trading company seeking certifica-
20 tion under this Act shall file with the Secretary a written
21 application for certification setting forth the following:

22 **“(1) The name of the association or export trad-**
23 **ing company.**

1 “(2) The location of all of the offices or places of
2 business of the association or export trading company
3 in the United States and abroad.

4 “(3) The names and addresses of all of the offi-
5 cers, stockholders, and members of the association or
6 export trading company.

7 “(4) A copy of the certificate or articles of incor-
8 poration and bylaws, if the association or export trad-
9 ing company is a corporation; or a copy of the articles,
10 partnership, joint venture, or other agreement or con-
11 tract under which the association conducts or proposes
12 to conduct its export trade activities or contract of as-
13 sociation, if the association is unincorporated.

14 “(5) A description of the goods, wares, merchan-
15 dise, or services which the association or export trad-
16 ing company or their members export or propose to
17 export.

18 “(6) A description of the domestic and interna-
19 tional conditions, circumstances, and factors which
20 show that the association or export trading company
21 and its activities will serve a specified need in promot-
22 ing the export trade of the described goods, wares,
23 merchandise, or services.

24 “(7) The export trade activities in which the asso-
25 ciation or export trading company intends to engage

1 and the methods by which the association or export
2 trading company conducts or proposes to conduct
3 export trade in the described goods, wares, merchan-
4 dise, or services, including, but not limited to, any
5 agreements to sell exclusively to or through the associ-
6 ation, any agreements with foreign persons who may
7 act as joint selling agents, any agreements to acquire a
8 foreign selling agent, any agreements for pooling tangi-
9 ble or intangible property or resources, or any territo-
10 rial, price-maintenance, membership, or other restric-
11 tions to be imposed upon members of the association or
12 export trading company.

13 “(8) The names of all countries where export
14 trade in the described goods, wares, merchandise, or
15 services is conducted or proposed to be conducted by
16 or through the association or export trading company.

17 “(9) Any other information which the Secretary
18 may request concerning the organization, operation,
19 management, or finances of the association or export
20 trading company; the relation of the association or
21 export trading company to other associations, corpora-
22 tions, partnerships, and individuals; and competition or
23 potential competition, and effects of the association or
24 export trading company thereon. The Secretary may
25 request such information as part of an initial applica-

1 tion or as a necessary supplement thereto. The Secre-
2 tary may not request information under this paragraph
3 which is not reasonably available to the person making
4 application or which is not necessary for certification of
5 the prospective association or export trading company.

6 “(b) ISSUANCE OF CERTIFICATE.—

7 “(1) NINETY-DAY PERIOD.—The Secretary shall
8 issue a certificate to an association or export trading
9 company within ninety days after receiving the applica-
10 tion for certification or necessary supplement thereto if
11 the Secretary, after consultation with the Attorney
12 General and Commission, determines that the associ-
13 ation, its export trade, export trade activities and
14 methods of operation, or export trading company, and
15 its export trade, export trade activities and methods of
16 operation meet the requirements of section 2 of this
17 Act and that the association or export trading company
18 and its activities will serve a specified need in promot-
19 ing the export trade of the goods, wares, merchandise,
20 or services described in the application for certification.
21 The certificate shall specify the permissible export
22 trade, export trade activities and methods of operation
23 of the association or export trading company and shall
24 include any terms and conditions the Secretary deems
25 necessary to comply with the requirements of section 2

1 of this Act. The Secretary shall deliver to the Attorney
2 General and the Commission a copy of any certificate
3 that he proposes to issue. The Attorney General or
4 Commission may, within fifteen days thereafter, give
5 written notice to the Secretary of an intent to offer
6 advice on the determination. The Attorney General or
7 Commission may, after giving such written notice and
8 within forty-five days of the time the Secretary has de-
9 livered a copy of a proposed certificate, formally advise
10 the Secretary of disagreement with his determination.
11 The Secretary shall not issue any certificate prior to
12 the expiration of such forty-five day period unless he
13 has (A) received no notice of intent to offer advice by
14 the Attorney General or the Commission within fifteen
15 days after delivering a copy of a proposed certificate,
16 or (B) received any notice and formal advice of dis-
17 agreement or written confirmation that no formal dis-
18 agreement will be transmitted from the Attorney Gen-
19 eral and the Commission. After the forty-five day
20 period or, if no notice of intent to offer advice has been
21 given, after the fifteen-day period, the Secretary shall
22 either issue the proposed certificate, issue an amended
23 certificate, or deny the application. Upon agreement of
24 the applicant, the Secretary may delay taking action
25 for not more than thirty additional days after the forty-

1 five day period. Before offering advice on a proposed
2 certification, the Attorney General and Commission
3 shall consult in an effort to avoid, wherever possible,
4 having both agencies offer advice on any application.

5 “(2) EXPEDITED CERTIFICATION.—In those in-
6 stances where the temporary nature of the export trade
7 activities, deadlines for bidding on contracts or filling
8 orders, or any other circumstances beyond the control
9 of the association or export trading company which
10 have a significant impact on its export trade, make the
11 90-day period for application approval described in
12 paragraph (1) of this subsection, or an amended appli-
13 cation approval as provided in subsection (c) of this
14 section, impractical for the association or export trad-
15 ing company seeking certification, such association or
16 export trading company may request and may receive
17 expedited action on its application for certification.

18 “(3) APPEAL OF DETERMINATION.—If the Secre-
19 tary determines not to issue a certificate to an associ-
20 ation or export trading company which has submitted
21 an application or an amended application for certifica-
22 tion, then he shall—

23 “(A) notify the association or export trading
24 company of his determination and the reasons for
25 his determination, and

1 “(B) upon request made by the association or
2 export trading company afford it an opportunity
3 for a hearing with respect to that determination in
4 accordance with section 557 of title 5, United
5 States Code.

6 “(c) MATERIAL CHANGES IN CIRCUMSTANCES;
7 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
8 terial change in the membership, export trade, export trade
9 activities, or methods of operation, of an association or export
10 trading company then it shall report such change to the Sec-
11 retary and may apply to the Secretary for an amendment of
12 its certificate. Any application for an amendment to a certifi-
13 cate shall set forth the requested amendment of the certifi-
14 cate and the reasons for the requested amendment. Any re-
15 quest for the amendment of a certificate shall be treated in
16 the same manner as an original application for a certificate.
17 If the request is filed within thirty days after a material
18 change which requires the amendment, and if the requested
19 amendment is approved, then there shall be no interruption in
20 the period for which the certificate is in effect.

21 “(d) AMENDMENT OR REVOCATION OF CERTIFICATE
22 BY SECRETARY.—After notifying the association or export
23 trading company involved and after an opportunity for hear-
24 ing pursuant to section 554 of title 5, United States Code,
25 the Secretary, on his own initiative—

1 “(1) may require that the organization or oper-
2 ation of the association or export trading company be
3 modified to correspond with its certification, or

4 “(2) shall, upon a determination that the export
5 trade, export trade activities or methods of operation of
6 the association or export trading company no longer
7 meet the requirements of section 2 of this Act, revoke
8 the certificate or make such amendments as may be
9 necessary to satisfy the requirements of such section.

10 “(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
11 ATTORNEY GENERAL OR CHAIRMAN—

12 “(1) The Attorney General or the Commission
13 may bring an action against an association or export
14 trading company or its members to invalidate, in whole
15 or in part, the certification on the ground that the
16 export trade, export trade activities or methods of op-
17 eration of the association or export trading company
18 fail or have failed, to meet the requirements of section
19 2 of this Act. The Attorney General or Commission
20 shall notify any association or export trading company
21 or member thereof, against which it intends to bring an
22 action for revocation, thirty days in advance, as to its
23 intent to file an action under this subsection. The dis-
24 trict court shall consider any issues presented in any
25 such action de novo and if it finds that the require-

1 ments of section 2 are not met, it shall issue an order
2 declaring the certificate invalid and any other order
3 necessary to effectuate the purposes of this Act and
4 the requirements of section 2.

5 “(2) Any action brought under this subsection
6 shall be considered an action described in section 1337
7 of title 28, United States Code. Pending any such
8 action which was brought during the period any ex-
9 emption is held in abeyance pursuant to section 2(c) of
10 this Act, the court may make such temporary restrain-
11 ing order or prohibition as shall be deemed just in the
12 premises.

13 “(3) No person other than the Attorney General
14 or Commission shall have standing to bring an action
15 against an association or export trading company or
16 their respective members for failure of the association
17 or export trading company or their respective export
18 trade, export trade activities or methods of operation to
19 meet the criteria of section 2 of this Act.

20 “SEC. 5. GUIDELINES.

21 “(a) INITIAL PROPOSED GUIDELINES.—Within ninety
22 days after the enactment of the Export Trade Association
23 Act of 1980, the Secretary, after consultation with the Attor-
24 ney General, and the Commission shall publish proposed
25 guidelines for purposes of determining whether export trade,

1 export trade activities and methods of operation of an associ-
2 ation or export trading company will meet the requirements
3 of section 2 of this Act.

4 “(b) PUBLIC COMMENT PERIOD.—Following publica-
5 tion of the proposed guidelines, and any proposed revision of
6 guidelines, interested parties shall have thirty days to com-
7 ment on the proposed guidelines. The Secretary shall review
8 the comments and, after consultation with the Attorney Gen-
9 eral, and Commission, publish final guidelines within thirty
10 days after the last day on which comments may be made
11 under the preceding sentence.

12 “(c) PERIODIC REVISION.—After publication of the
13 final guidelines, the Secretary shall periodically review the
14 guidelines and, after consultation with the Attorney General,
15 and the Commission, propose revisions as needed.

16 “(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
17 ACT.—The promulgation of guidelines under this section
18 shall not be considered rulemaking for purposes of subchapter
19 II of chapter 5 of title 5, United States Code, and section
20 553 of such title shall not apply to their promulgation.

21 “SEC. 6. ANNUAL REPORTS.

22 “Every certified association or export trading company
23 shall submit to the Secretary an annual report, in such form
24 and at such time as he may require, which report updates

1 where necessary the information described by section 4(a) of
2 this Act.

3 **"SEC. 7. OFFICE OF EXPORT TRADE IN COMMERCE**
4 **DEPARTMENT.**

5 "The Secretary shall establish within the Department of
6 Commerce an office to promote and encourage to the great-
7 est extent feasible the formation of export trade associations
8 and export trading companies through the use of provisions of
9 this Act in a manner consistent with this Act.

10 **"SEC. 8. AUTOMATIC CERTIFICATION FOR EXISTING**
11 **ASSOCIATIONS.**

12 "The Secretary shall certify any export trade associ-
13 ation registered with the Federal Trade Commission as of
14 April 3, 1980, if such association, within one hundred and
15 eighty days after the date of enactment of such Act, files with
16 the Secretary an application for certification as provided for
17 in section 5 of this Act, unless such application shows on its
18 face that the association is not eligible for certification under
19 this Act.

20 **"SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL**
21 **REPORT INFORMATION.**

22 "(a) **GENERAL RULE.**—Portions of applications made
23 under section 4, including amendments to such applications,
24 and annual reports made under section 6 that contain trade
25 secrets or confidential business or financial information, the

1 disclosure of which would harm the competitive position of
2 the person submitting such information shall be confidential,
3 and, except as authorized by this section, no officer or em-
4 ployee, or former officer or employee, of the United States
5 shall disclose any such confidential information, obtained by
6 him in any manner in connection with his service as such an
7 officer or employee.

8 “(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
9 MISSION.—Whenever the Secretary believes that an appli-
10 cant may be eligible for a certificate, or has issued a certifi-
11 cate to an association or export trading company, he shall
12 promptly make available all materials filed by the applicant,
13 association or export trading company, including applications
14 and supplements thereto, reports of material changes, appli-
15 cations for amendments and annual reports, and information
16 derived therefrom. The Secretary shall make available appli-
17 cations, amendments thereto or annual reports, or informa-
18 tion derived therefrom, to the Attorney General or Commis-
19 sion, or any employee or officer thereof, for official use in
20 connection with an investigation or judicial or administrative
21 proceeding under this Act or the antitrust laws to which the
22 United States or the Commission is or may be a party. Such
23 information may only be disclosed by the Secretary upon a
24 prior certification that the information will be maintained in

1 confidence and will only be used for such official law enforce-
2 ment purposes.

3 **"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
4 **UNITED STATES OBLIGATIONS.**

5 "At such time as the United States undertakes binding
6 international obligations by treaty or statute, to the extent
7 that the operations of any export trade association or export
8 trading company, certified under this Act, are inconsistent
9 with such international obligations, the Secretary may re-
10 quire it to modify its operations so as to be consistent with
11 such international obligations.

12 **"SEC. 11. REGULATIONS.**

13 "The Secretary, after consultation with the Attorney
14 General and the Commission, shall promulgate such rules
15 and regulations as may be necessary to carry out the pur-
16 poses of this Act.

17 **"SEC. 12. TASK FORCE STUDY.**

18 "Seven years after the date of enactment of the Export
19 Trade Association Act of 1980, the President shall appoint,
20 by and with the advice and consent of the Senate, a task
21 force to examine the effect of the operation of this Act on
22 domestic competition and on United States international
23 trade and to recommend either continuation, revision, or ter-
24 mination of the Webb-Pomerene Act. The task force shall

1 have one year to conduct its study and to make its recom-
2 mendations to the President.”.

3 (b) REDESIGNATION OF SECTION 6.—The Act is
4 amended—

5 (1) by striking out “SEC. 6.” in section 6 (15
6 U.S.C. 66), and

7 (2) by inserting immediately before such section
8 the following:

9 “SEC. 14. SHORT TITLE.”.

10 TITLE III—TAXATION OF EXPORT TRADING
11 COMPANIES

12 APPLICATION OF DISC RULES TO EXPORT TRADING
13 COMPANIES

14 SEC. 301. (a) Paragraph (3) of section 992(d) of the In-
15 ternal Revenue Code of 1954 (relating to ineligible corpora-
16 tions) is amended by inserting before the comma at the end
17 thereof the following: “(other than a financial institution
18 which is a banking organization as defined in section
19 105(a)(1) of the Export Trading Company Act of 1980 in-
20 vesting in the voting stock of an export trading company (as
21 defined in section 103(5) of the Export Trading Act of 1980)
22 in accordance with the provisions of section 105 of such
23 Act)”.

1 (b) Paragraph (1) of section 993(a) of the Internal Reve-
2 nue Code of 1954 (relating to qualified export receipts of a
3 DISC) is amended—

4 (1) by striking out “and” at the end of subpara-
5 graph (G),

6 (2) by striking out the period at the end of sub-
7 paragraph (H) and inserting in lieu thereof “and”, and

8 (3) by adding at the end thereof the following new
9 subparagraph:

10 “(I) in the case of a DISC which is an
11 export trading company (as defined in section
12 103(5) of the Export Trading Company Act of
13 1980), or which is a subsidiary of such a compa-
14 ny, gross receipts from the export of services pro-
15 duced in the United States (as defined in section
16 103(3) of such Act) or from export trade services
17 (as defined in section 103(4) of such Act).”.

18 (c) The Secretary of Commerce, after consultation with
19 the Secretary of the Treasury, shall develop, prepare, and
20 distribute to interested parties, including potential exporters,
21 information concerning the manner in which an export trad-
22 ing company can utilize the provisions of part IV of sub-
23 chapter N of chapter 1 of the Internal Revenue Code of 1954
24 (relating to domestic international sales corporations), and
25 any advantages or disadvantages which may reasonably be

1 expected from the election of DISC status or the establish-
2 ment of a subsidiary corporation which is a DISC.

3 (d) The amendments made by this section shall apply
4 with respect to taxable years beginning after December 31,
5 1980.

6 SUBCHAPTER S STATUS FOR EXPORT TRADING

7 COMPANIES

8 SEC. 302. (a) Paragraph (2) of section 1371(a) of the
9 Internal Revenue Code of 1954 (relating to the definition of a
10 small business corporation) is amended by inserting “, except
11 in the case of the shareholders of an export trading company
12 (as defined in section 103(5) of the Export Trading Company
13 Act of 1980) if such shareholders are otherwise small busi-
14 ness corporations for the purpose of this subchapter,” after
15 “shareholder”.

16 (b) The first sentence of section 1372(e)(4) of such Code
17 (relating to foreign income) is amended by inserting “, other
18 than an export trading company,” after “small business
19 corporation”.

20 (c) The amendments made by this section shall apply
21 with respect to taxable years beginning after December 31,
22 1980.

Calendar No. 785

96TH CONGRESS
2D SESSION

S. 2718

[Report No. 96-735]

A BILL

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

MAY 15 (legislative day, JANUARY 3), 1980

Read twice and ordered to be placed on the calendar

AMENDMENT NO. 2273

Calendar No. 785

Purpose: To include nonprofit service organizations in the definition of export trading companies and to encourage the involvement of minority businesses in export activities.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 2718

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

August 21 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. STEVENSON

Viz:

1 On page 5, line 10, insert after "company", the follow-
2 ing new language: " , whether operated for profit or as a
3 nonprofit organization,".

4 On page 6, line 4, at the end of the sentence delete the
5 period and add the following new language: " , whether oper-
6 ated for profit or as a nonprofit organization,".

7 On page 9, line 16, insert after "company," the follow-
8 ing new language: " , whether operated for profit or as a
9 nonprofit organization,".

1 On page 17, line 5, strike out “smaller and” and insert
2 in lieu thereof “small,”, and insert after “medium-size” the
3 following new language: “or minority”.

4 On page 19, line 5, insert after “guarantees,” the fol-
5 lowing new language: “and operating grants to nonprofit
6 organizations,”.

7 On page 19, line 10, strike out “or” and insert in lieu
8 thereof a comma.

9 On page 19, line 11, insert after “medium-size” the fol-
10 lowing new language: “or minority”.

11 On page 23, line 20, insert after “corporations” the fol-
12 lowing new language: “, whether operated for profit or orga-
13 nized as nonprofit corporations,”.

Amendment No. 2273

S. 2718

AMENDMENT NO. 2276

Calendar No. 785

Purpose: To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 2718

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

August 22 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. PROXMIRE (for himself, Mr. TOWER, Mr. KENNEDY, and Mr. METZENBAUM)

Viz:

1 Strike lines 19 to 25 on page 9; strike pages 10 through
2 15; and strike lines 1 through 9 on page 16; and insert in lieu
3 thereof the following:

4 “(b) Notwithstanding any prohibition, restriction, limita-
5 tion, condition or requirement of any other law, a banking
6 organization, subject to the limitations of subsection (c) and
7 the procedures of this subsection, may invest directly and
8 indirectly in the aggregate, up to 5 per centum of its consoli-
9 dated capital and surplus (25 per centum in the case of an
10 Edge Corporation or Agreement Corporation not engaged in

1 banking) in the voting stock or other evidence of ownership of
2 one or more export trading companies. A banking organiza-
3 tion may—

4 “(1) invest directly or indirectly up to an aggre-
5 gate amount of \$10,000,000 in one or more export
6 trading companies without the prior approval of the
7 appropriate Federal banking agency;

8 “(2) invest directly or indirectly in excess of an
9 aggregate amount of \$10,000,000 in one or more
10 export trading companies only with the prior approval
11 of the appropriate Federal banking agency.

12 Any banking organization which makes an investment under
13 authority of (1) above shall promptly notify the appropriate
14 Federal banking agency of such investment and shall file re-
15 ports on such investment as such agency may require.

16 “(c) The following limitations apply to export trading
17 companies whose shares are held by one or more banking
18 organizations and to the banking organizations holding such
19 shares—

20 “(1) except as provided in subsection (d), no bank-
21 ing organization may acquire 20 per centum or more of
22 the voting stock or otherwise control an export trading
23 company;

24 “(2) except as provided in subsection (d), no bank-
25 ing organization may acquire voting stock of an export

1 trading company if such acquisition would result in 50
2 per centum or more of the voting stock of the export
3 trading company being owned by banking organiza-
4 tions;

5 “(3) neither an export trading company nor a
6 banking organization that owns its shares shall make
7 any representation that the export trading company
8 and the banking organization are affiliated. For this
9 purpose, the name of such export trading company
10 shall not be similar in any respect to that of a banking
11 organization that owns its shares;

12 “(4) the total historical cost of the direct and indi-
13 rect investments by a banking organization in an
14 export trading company combined with extensions of
15 credit by the banking organization and its direct and
16 indirect subsidiaries shall not exceed 10 per centum of
17 the banking organization’s capital and surplus;

18 “(5) a banking organization that owns any voting
19 stock of an export trading company shall divest such
20 stock if the export trading company takes a position in
21 commodities or commodities contracts other than as
22 may be necessary in the course of its export business;

23 “(6) no banking organization holding voting stock
24 or other evidences of ownership of any export trading
25 company may extend credit or cause any affiliate to

1 extend credit to any export trading company or to cus-
2 tomers of such company on terms more favorable than
3 those afforded similar borrowers in similar circum-
4 stances, and such extension of credit shall not involve
5 more than the normal risk of repayment or present
6 other unfavorable features.

7 “(d)(1) With the prior approval of the Board of Gover-
8 nors a bank holding company may acquire 20 per centum or
9 more or otherwise control an export trading company.

10 “(2) With the prior approval of the Board of Governors,
11 a bank holding company may acquire voting stock of an
12 export trading company if such acquisition would result in 50
13 per centum or more of the voting stock of the export trading
14 company being owned by banking organizations.

15 “(3) The Board of Governors shall not approve an appli-
16 cation under this subsection unless it determines on the basis
17 of the record that—

18 “(i) the export trading company will limit its ac-
19 tivities to exporting or facilitating the exportation of
20 specific goods or services which would not be exported
21 to any significant extent without the involvement of an
22 export trading company;

23 “(ii) investment by a bank holding company in
24 excess of the limitations in subsection (c) is clearly nec-

1 essary in order for the export trading company to
2 export or facilitate the export of goods or services;

3 “(iii) the export trading company will limit its ac-
4 tivities to a level consistent with the need for minimiz-
5 ing the financial risk of the investing bank holding
6 company and maintaining a separation between bank-
7 ing and commerce, as determined by the Board.

8 “(4) The Board, upon receiving an application under
9 this subsection, shall provide a copy to the appropriate Fed-
10 eral banking agency of the subsidiary banks of the bank hold-
11 ing company and shall request the comments of that agency.

12 “(e)(1) In the case of every application under this sec-
13 tion, the appropriate Federal banking agency shall take into
14 consideration the financial and managerial resources, compet-
15 itive situation, and future prospects of the banking organiza-
16 tion and export trading company concerned, and the benefits
17 of the proposal to United States business, industrial, and ag-
18 ricultural concerns, and to improving the competitiveness of
19 United States exports in world markets. The appropriate
20 Federal banking agency may not approve any investment for
21 which an application has been filed under this section unless
22 it finds that there are significant export benefits and that such
23 benefits clearly outweigh in the public interest any adverse
24 financial, managerial, competitive, or other banking factors
25 associated with the particular investment. Any disapproval

Amendment No. 2276

S. 2718

Amendment No. 2277

S. 2718

AMENDMENT NO. 2277

Calendar No. 785

Purpose:

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IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 2718

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

August 22 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. PROXMIRE (for himself, Mr. KENNEDY, and Mr. METZENBAUM)

Viz:

- 1 On page 26, line 19, delete subsection (c).
- 2 On page 31, line 10, delete “.” and add “in which case
- 3 the Secretary shall not issue the certification.”.
- 4 On page 31, lines 19 and 20, delete “After the forty-
- 5 five day period or,”.
- 6 On page 34, line 10, delete subsection (e).

AMENDMENT NO. 2278

Calendar No. 785

Purpose: To provide for States' rights in connection with investments by State banks in export trading companies (new section 105(g)).

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 2718

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

August 22 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. STEVENSON

Viz: On page 18, line 24, add the following new subsection (g):

- 1 (g) Nothing in this section shall at any time prevent any
- 2 State from adopting a law prohibiting banks chartered under
- 3 the laws of such State from investing in export trading com-
- 4 panies or applying conditions, limitations, or restrictions on
- 5 investments by banks chartered under the laws of such State
- 6 in export trading companies in addition to any conditions,
- 7 limitations, or restrictions provided under this section.

Amendment No. 2278

S. 2718

AMENDMENT NO. 2279

Calendar No. 785

Purpose: To prohibit speculation in securities and foreign exchange by export trading companies in which banks may invest (section 105(c)(3)).

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 2718

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

August 22 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. STEVENSON

Viz:

1 On page 13, insert after “commodities contracts” on
2 line 14, the following new language “, in securities, or in
3 exchange,”.

Amendment No. 2279

S. 2718

AMENDMENT NO. 2280

Calendar No. 785

Purpose: To define the scope of activities of export trading companies in which banks may invest section 105(a)(13).

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 2718

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

August 22 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. STEVENSON

Viz: On page 9, strike lines 14 through 18 and insert in lieu thereof the following new definition of export trading company:

1 “(13) for the purposes of this section, the term
2 ‘export trading company’ means a company which does
3 business under the laws of the United States or any
4 State and which is exclusively engaged in activities re-
5 lated to international trade: *Provided, however,* That
6 any such company must also either meet the definition
7 of export trading company in section 103(a)(5) of this
8 Act, or be organized and operated principally for the
9 purpose of providing export trade services, as defined
10 in section 103(a)(4) of this Act: *Provided, further,* That
11 nothing in this Act shall be construed to permit any

1 such company, for purposes of this section, (A) to
2 engage in the business of underwriting, selling, or dis-
3 tributing securities in the United States, or (B) to
4 engage in manufacturing or agricultural production ac-
5 tivities in the United States.”.

Amendment No. 2280

S. 2718

AMENDMENT NO. 2281

Calendar No. 785

Purpose: Technical amendments.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 2718

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

August 25 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. DANFORTH

Viz:

1 On page 4, line 4, delete the word “sourced” and insert
2 in lieu thereof the word “produced” and further on line 5
3 insert the following after the word “States”: “, and”.

4 On page 5, line 6, insert a “,” after the word
5 “financing”.

6 On page 23, line 4, delete the word “includes” and
7 insert in lieu thereof the word “means”.

8 On page 23, between lines 5 and 6, insert the following
9 new paragraph (4) and renumber (4) through (10), as num-
10 bers (5) through (11) respectively:

11 “(4) METHODS OF OPERATION.—The term
12 ‘methods of operation’ means the methods by which an

1 association or export trading company conducts or pro-
2 poses to conduct export trade.”.

3 On page 24, line 22, insert the phrase “, export trade
4 activities” after the word “trade”.

5 On page 25, lines 4, 8, and 12, insert the phrase “or
6 export trading company” after the word “association” on
7 each line.

8 On page 26, lines 5 and 6, delete the phrase “with re-
9 spect to its export trade, export trade activities, and methods
10 of operation”.

11 On page 26, lines 7 and 8, delete the phrase “as relates
12 to their respective” and insert in lieu thereof “with respect to
13 their”.

14 On page 26, line 8, delete the word “or” and insert in
15 lieu thereof the word “and”.

16 On page 26, line 10, delete the second “the” and insert
17 in lieu thereof the word “this”.

18 On page 26, line 14, delete the word “the” and insert in
19 lieu thereof the word “an”.

20 On page 26, line 16, insert the word “export” after the
21 word “such”.

22 On page 27, line 19, delete the first word “company”.

23 On page 28, line 11, insert the phrase “or export trad-
24 ing company” after the word “association”.

1 On page 28, line 12, insert a “,” after the word
2 “activities”.

3 On page 28, line 13, insert the phrase “or export trad-
4 ing company” after the complete word “association”.

5 On page 29, line 6, insert the phrase “or export trading
6 company” after the partial word “ation”.

7 On page 30, line 13, insert the word “and” after the
8 partial word “ation”.

9 On page 30, lines 17 and 18, delete the phrase “that
10 the association or export trading company and its activities”.

11 On page 31, line 16, delete the phrase “notice and” and
12 insert in lieu thereof the word “noticed”.

13 On page 34, line 11, delete the word “chairman” and
14 insert in lieu thereof the word “Commission”.

15 On page 34, line 15, delete the phrase “the certifica-
16 tion” and insert in lieu thereof the phrase “its certificate”.

17 On page 34, line 18, delete the “,” after the word
18 “failed”.

19 On page 34, line 22, delete the word “revocation” and
20 insert in lieu thereof the word “invalidation”.

21 On page 35, line 19, delete the word “criteria” and
22 insert in lieu thereof the words “eligibility requirements”.

23 On page 37, line 15, delete the phrase “such Act” and
24 insert in lieu thereof the phrase “the Export Trade Associ-
25 ation Act of 1980”.

1 On page 38, lines 16–18, delete in its entirety lines 16
2 and 17 and the partial word “tion” on line 18.

3 On page 40, line 9, delete the number “14” and insert
4 in lieu thereof the number “13”.

5 On page 35, line 2, delete the word “and” and insert in
6 lieu thereof the word “or”.

7 On page 37, line 17, delete the number “5” and insert
8 in lieu thereof the phrase “4(a)(1)–(9)”.

9 On page 26, line 14, insert the phrase “in whole or in
10 part” after the word “validation”.

11 On page 31, line 10, insert the phrase “and the petition-
12 ing association or export trading company” after the word
13 “Secretary” and further delete the word “his” and insert in
14 lieu thereof the phrase “the Secretary’s”.

15 On page 39, line 10, delete the phrase “it to modify its”
16 and insert in lieu thereof the phrase “the association or
17 export trading company to modify its respective”.

18 On page 40, line 10, insert the phrase “, and in so doing
19 afford the association or export trading company a reasonable
20 opportunity to comply therewith,” after the word
21 “operations”.

22 On page 24, line 3, delete the phrase “and section 4”
23 and insert in lieu thereof the phrase “, sections 5 and 6” and
24 further on line 4 delete the number “44” and insert in lieu
25 thereof the numbers “45, 46”.

1 On page 34, line 19, delete the word “The” and insert
2 in lieu thereof the phrase “Except in the case of an action
3 brought during the period before an antitrust exemption be-
4 comes effective, as provided for in section 2(c),”.

Amendment No. 2281

S. 2718

AMENDMENT NO. 2282

Calendar No. 785

Purpose: To provide for automatic certification of existing Webb-Pomerene Associations.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 2718

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

August 25 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. DANFORTH

Viz:

1 On page 32, line 18, redesignate paragraph (3) as para-
2 graph (4), and insert immediately after paragraph (2) the fol-
3 lowing new paragraph:

4 “(3) AUTOMATIC CERTIFICATION FOR EXISTING
5 ASSOCIATIONS.—Any association registered with the
6 Federal Trade Commission under this Act as of April
7 3, 1980, may file with the Secretary an application for
8 automatic certification of any export trade, export
9 trade activities, and methods of operation in which it
10 was engaged prior to enactment of the Export Trade
11 Association Act of 1980. Any such application must be
12 filed within 180 days after the date of enactment of

1 such Act and shall be acted upon by the Secretary in
2 accordance with the procedures provided by this sec-
3 tion. The Secretary shall issue to the association a cer-
4 tificate specifying the permissible export trade, export
5 trade activities, and methods of operation that he de-
6 termines are shown by the application (including any
7 necessary supplement thereto), on its face, to be eligi-
8 ble for certification under this Act, and including any
9 terms and conditions the Secretary deems necessary to
10 comply with the requirements of section 2(a) of this
11 Act, unless the Secretary possesses information clearly
12 indicating that the requirements of section 2(a) are not
13 met.”.

14 On page 37, strike out lines 10 through 19, and insert
15 in lieu thereof the following:

16 **“SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING**
17 **ASSOCIATIONS.**

18 “(a) **ELIGIBILITY.**—To be eligible for the antitrust ex-
19 emption provided by this section, an association must have
20 been registered with the Federal Trade Commission under
21 this Act on April 3, 1980.

22 “(b) **DURATION.**—The antitrust exemption provided by
23 this section shall extend only to the existence of an eligible
24 association, and to agreements made and acts done by such
25 association, prior to 180 days after the date of enactment of

1 the Export Trade Association Act of 1980, or, in the event
2 that an eligible association files an application for certifica-
3 tion pursuant to section 4 of this Act during such 180 days,
4 prior to the Secretary's determination on such application.

5 “(c) EXEMPTION.—Subject to the limitations in subsec-
6 tions (a) and (b), nothing contained in sections 1 to 7 of the
7 Sherman Act shall be construed as declaring to be illegal an
8 association entered into for the sole purpose of engaging in
9 export trade and actually engaged solely in such export
10 trade, or an agreement made or act done in the course of
11 export trade by such association, provided such association,
12 agreement, or act is not in restraint of trade within the
13 United States, and is not in restraint of the export trade of
14 any domestic competitor of such association: *Provided, That*
15 such association does not, either in the United States or else-
16 where, enter into any agreement, understanding, or conspir-
17 acy, or do any act which artificially or intentionally enhances
18 or depresses prices within the United States of commodities
19 of the class exported by such association, or which substan-
20 tially lessens competition within the United States or other-
21 wise restrains trade therein.”.

Amendment No. 2282

S. 2718

AMENDMENT NO. 2286

Calendar No. 785

Purpose: To strike the separate Economic Development Administration and Small Business Administration authorization for export trading company financing.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 2718

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

August 27 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. HELMS

Viz:

- 1 On page 19, line 2, strike out “(a)”.
- 2 On page 19, strike out lines 13 through 18.

96TH CONGRESS
2D SESSION

S. 2757

To encourage exports and the expansion of export trade services by providing for special provisions on taxation of export trading companies.

> IN THE SENATE OF THE UNITED STATES

MAY 22 (legislative day, JANUARY 3), 1980

Mr. BENTSEN (for himself, Mr. STEVENSON, Mr. HEINZ, and Mr. DANFORTH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To encourage exports and the expansion of export trade services by providing for special provisions on taxation of export trading companies.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 SECTION 1. (a) Paragraph (3) of section 992(d) of the
4 Internal Revenue Code of 1954 (relating to ineligible corpo-
5 rations) is amended by inserting before the comma at the end
6 thereof the following: "(other than a financial institution
7 which is a banking organization as defined in section
8 105(a)(1) of the Export Trading Company Act of 1980 in-

1 vesting in the voting stock of an export trading company (as
2 defined in section 103(5) of the Export Trading Act of 1980)
3 in accordance with the provisions of section 105 of such
4 Act)".

5 (b) Paragraph (1) of section 993(a) of the Internal Reve-
6 nue Code of 1954 (relating to qualified export receipts of a
7 DISC) is amended—

8 (1) by striking out "and" at the end of subpara-
9 graph (G),

10 (2) by striking out the period at the end of sub-
11 paragraph (H) and inserting in lieu thereof "and", and

12 (3) by adding at the end thereof the following new
13 subparagraph:

14 "(I) in the case of a DISC which is an
15 export trading company (as defined in section
16 103(5) of the Export Trading Company Act of
17 1980), or which is a subsidiary of such a compa-
18 ny, gross receipts from the export of services pro-
19 duced in the United States (as defined in section
20 103(3) of such Act) or from export trade services
21 (as defined in section 103(4) of such Act)."

22 (c) The Secretary of Commerce, after consultation with
23 the Secretary of the Treasury, shall develop, prepare, and
24 distribute to interested parties, including potential exporters,
25 information concerning the manner in which an export trad-

company can utilize the provisions of part IV of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to domestic international sales corporations), and the advantages or disadvantages which may reasonably be derived from the election of DISC status or the establishment of a subsidiary corporation which is a DISC.

7 (d) The amendments made by this section shall apply
8 with respect to taxable years beginning after December 31,
9 1980.

10 SUBCHAPTER S STATUS FOR EXPORT TRADING

11 COMPANIES

12 - SEC. 2. (a) Paragraph (2) of section 1371(a) of the Internal Revenue Code of 1954 (relating to the definition of a
13 small business corporation) is amended by inserting “, except
14 in the case of the shareholders of an export trading company
15 (as defined in section 103(5) of the Export Trading Company
16 Act of 1980) if such shareholders are otherwise small business
17 corporations for the purpose of this subchapter,” after
18 “shareholder”.

20 (b) The first sentence of section 1372(e)(4) of such Code
21 (relating to foreign income) is amended by inserting “, other
22 than an export trading company,” after “small business
23 corporation”.

24 (c) The amendments made by this section shall apply
25 with respect to taxable years beginning after December 31,
26 1980.

96TH CONGRESS
2D SESSION

S. 2773

To establish a national export policy for the United States.

IN THE SENATE OF THE UNITED STATES

MAY 29 (legislative day, JANUARY 3), 1980

Mr. ROTH (for himself, Mr. STEVENSON, Mr. CHAFEE, Mr. BENTSEN, Mr. HEINZ, Mr. GOLDWATER, Mr. MORGAN, Mr. DANFORTH, Mr. INOUE, Mr. TOWER, Mr. JEPSEN, Mr. CRANSTON, Mr. COHEN, Mr. DURENBERGER, Mr. JAVITS, Mr. HAYAKAWA, Mr. MATHIAS, Mr. PERCY, Mr. LUGAR, Mr. BAYH, Mr. TSONGAS, Mr. RIEGLE, Mr. GARN, Mr. COCHRAN, Mr. MELCHER, and Mr. MCGOVERN) introduced the following bill; which was read twice and ordered held at the desk

JUNE 4 (legislative day, JANUARY 3), 1980

Referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To establish a national export policy for the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the “Na-
5 tional Export Policy Act of 1980”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—GENERAL FINDINGS AND PURPOSES

- Sec. 101. Findings.
- Sec. 102. Purposes.

TITLE II—EXPORT FINANCING

PART 1—FINDINGS AND PURPOSE

- Sec. 201. Findings and Purpose.

PART 2—COMPETITIVE EXPORT FINANCING

- Sec. 221. Export-Import Bank to provide competitive financing.
- Sec. 222. Authorization of appropriations.
- Sec. 223. Reports on adequacy of appropriations.
- Sec. 224. Effective date for section 221.
- Sec. 225. Export expansion facility amendments.
- Sec. 226. Export-Import Bank board of directors.
- Sec. 227. Legislative consideration of limits on Export-Import Bank activities.

TITLE III—EXPORT-RELATED TAX POLICY

- Sec. 301. Findings; conclusions.
- Sec. 302. Taxation of Americans overseas.
- Sec. 303. Reasonable estimation of bad debt reserves for export receivables.
- Sec. 304. Clarification of tax treatment of certain research and experimental expenditures.
- Sec. 305. Clarification of the tax treatment of foreign currency fluctuation losses on export receivables.
- Sec. 306. Deadline for exempting exports from the manufacturers excise tax.
- Sec. 307. Use of foreign trade zones in exporting.
- Sec. 308. Application of DISC rules to export trading companies.
- Sec. 309. Subchapter S status for export trading companies.

TITLE IV—ANTITRUST

PART 1—FINDINGS AND CONCLUSIONS

- Sec. 401. Findings and conclusions.

PART 2—REVISION OF WEBB-POMERENE ACT

- Sec. 421. Webb-Pomerene Act amendments.

PART 3—ANTITRUST PROCEDURES SIMPLIFICATION

- Sec. 431. Definitions.
- Sec. 432. Studies by Attorney General.
- Sec. 433. Procedures.
- Sec. 434. Compliance by exporters.
- Sec. 435. Injunctions.

- Sec. 436. Reports and disclosures.
- Sec. 437. Authorization of appropriations.
- Sec. 438. Effective date.

TITLE V—AMENDMENTS TO OTHER LAWS THAT HINDER EXPORTS

PART 1—FINDINGS AND CONCLUSIONS

- Sec. 501. Findings and conclusions.

PART 2—BUSINESS ACCOUNTING AND TRADE SIMPLIFICATION

- Sec. 521. Findings and conclusions.
- Sec. 522. Amendment of short title.
- Sec. 523. Accounting standards.
- Sec. 524. Repeal of section 30A.
- Sec. 525. Definitions.
- Sec. 526. Authority to issue guidelines.
- Sec. 527. Conforming change in Internal Revenue Code.
- Sec. 528. International agreements.

PART 3—EXPORT COMPETITIVENESS STATEMENTS; PAPERWORK

- Sec. 531. Export competitiveness statements.
- Sec. 532. Reduction of export paperwork.

TITLE VI—EXPORT AWARENESS AND EXPORT PROMOTION PROGRAMS

PART 1—FINDINGS; CONCLUSIONS

- Sec. 601. Statement of findings and conclusions.

PART 2—EXPORT TRADING COMPANIES

- Sec. 621. Short title.
- Sec. 622. Purpose.
- Sec. 623. Definitions.
- Sec. 624. Functions of the Secretary of Commerce.
- Sec. 625. Ownership of export trading companies by banks, bank holding companies, and international banking corporations.
- Sec. 626. Initial investments and operating expenses.
- Sec. 627. Guarantees for export accounts receivable and inventory.

PART 3—SMALL BUSINESS ACT AMENDMENTS

- Sec. 631. Short title.
- Sec. 632. Purposes.
- Sec. 633. Small business export financing assistance.
- Sec. 634. Small business export expansion assistance.
- Sec. 635. Location; authorization of appropriations.
- Sec. 636. Clearinghouse function.

PART 4—JOINT EXPORT MARKETING ASSISTANCE

- Sec. 641. Establishment of program.
- Sec. 642. Marketing proposals.
- Sec. 643. Financial agreement.
- Sec. 644. Authorization of appropriations.

PART 5—INTERNATIONAL EDUCATION PROGRAMS

- Sec. 651. Short title.
- Sec. 652. Higher Education Act amendments.

PART 6—EXPORT OF SERVICES

- Sec. 661. Export of services.

TITLE VII—AGRICULTURAL EXPORTS

- Sec. 701. Statement of findings and conclusions.

PART 1—COMMODITY CREDIT CORPORATION FINANCING FOR CERTAIN SALES

- Sec. 711. Financing for short-term export credit sales of agricultural commodities.

PART 2—EXPORT-IMPORT BANK CREDITS

- Sec. 721. Export-Import Bank credits for agricultural commodities.

PART 3—INTERNATIONAL WHEAT EXPORTING COMMISSION

- Sec. 731. Findings.
- Sec. 732. Establishment of Commission.
- Sec. 733. Program.
- Sec. 734. Participation by United States.
- Sec. 735. Presidential reports to Congress.

TITLE VIII—INTERNATIONAL AGREEMENTS

- Sec. 801. Findings and conclusions.
- Sec. 802. Multilateral Trade Agreement of 1979 and followup.
- Sec. 803. International Financing Code.
- Sec. 804. International code of business conduct.
- Sec. 805. International code on reciprocity on enforcement of antitrust.
- Sec. 806. Multilateral code on fair trade in services.

TITLE IX—GOVERNMENT SUPPORT OF EXPORT GOODS

PART 1—FINDINGS AND CONCLUSIONS

- Sec. 901. Statement of findings and conclusions.

PART 2—OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS

Sec. 921. Short title.

Subpart A—Overseas Private Investment Corporation

- Sec. 925. Purpose and policy.
- Sec. 926. Capital of corporation.
- Sec. 927. Organization and management.
- Sec. 928. Investment insurance and other programs.
- Sec. 929. Issuing authority, direct investment fund and reserves.
- Sec. 930. Income and revenues.
- Sec. 931. General provisions relating to insurance and guaranty program.
- Sec. 932. Definitions.
- Sec. 933. General provisions and powers.
- Sec. 934. Small business development.
- Sec. 935. Reports to the Congress.

Subpart B—Amendment of Foreign Assistance Act of 1961

- Sec. 941. Conforming amendments.
- Sec. 942. Transition provisions.

PART 3—ROLE OF ALL UNITED STATES AGENCIES IN EXPORT EXPANSION

- Sec. 951. International Development Cooperation Agency.
- Sec. 952. Office of Management and Budget.
- Sec. 953. Role of the Justice Department.
- Sec. 954. Small Business Administration.
- Sec. 955. Department of Energy.
- Sec. 956. The Congress.

PART 4—NATIONAL EXPORT COUNCIL

- Sec. 961. Establishment and membership.
- Sec. 962. Functions.
- Sec. 963. Administrative provisions.
- Sec. 964. Annual report.
- Sec. 965. Authorizations.

PART 5—COMMERCE DEPARTMENT

- Sec. 971. Commercial officers overseas.
- Sec. 972. Training of commercial officers.
- Sec. 973. Rank and privileges.
- Sec. 974. Relationship to diplomatic mission.
- Sec. 975. Functions and duties.
- Sec. 976. Assignment to United States.
- Sec. 977. Office space, equipment, and administrative and clerical personnel.
- Sec. 978. Agency, services, personnel, and facilities.
- Sec. 979. Performance of functions in foreign localities.
- Sec. 980. Reports and dispatches—availability to interested Government agencies.
- Sec. 981. Representative allowances.

Sec. 982. Allowances and benefits.

Sec. 983. Advance payment for rent and other services: Funds for courtesies to foreign representatives.

PART 6—REVIEW OF UNITED STATES EXPORT PROGRAMS

Sec. 991. Review.

1 TITLE I—GENERAL FINDINGS AND PURPOSES

2 SEC. 101. FINDINGS.

3 The Congress finds that—

4 (1) exports have become critical to the health of
5 the United States economy, doubling in 10 years to
6 reach 10 percent of the gross national product, ac-
7 counting, directly or indirectly, for 1 out of 9 jobs,
8 over 25 percent of agricultural output, and over one-
9 fourth of goods produced;

10 (2) exports can play a major role in improving the
11 economic well-being of the United States—

12 (A) by providing the most constructive means
13 to pay for essential imports of raw materials,
14 fuels, and other goods;

15 (B) by helping to stem inflation;

16 (C) by creating jobs;

17 (D) by enhancing productivity;

18 (E) by helping to strengthen the value of the
19 dollar in world markets; and

20 (F) by supporting the United States influence
21 in international economic and political spheres;

1 and, with world markets growing at twice the pace of
2 the domestic economy, exports offer a promising
3 opportunity for economic growth;

4 (3) the United States international trade position
5 has been deteriorating in the face of strong competition
6 from the export-oriented nations in Europe, East Asia,
7 and the developing world, lagging productivity gains in
8 United States industries, and declining investment in
9 development of new technology; the United States
10 share of world exports is falling, growth of exports is
11 not keeping up with that of other competitor nations,
12 the United States no longer leads the world in manu-
13 factured goods exports, and both merchandise trade
14 and the balance of payments have registered repeated
15 record deficits;

16 (4) it is essential to the national interest that ex-
17 pansion of exports of United States farm products and
18 other goods and services be a principal national goal;

19 (5) as all other successful trading nations have
20 done, the United States must give priority to export
21 expansion and take measures to develop a strong, com-
22 prehensive, internally consistent approach that deals
23 with both current and longer range problems facing our
24 economy;

1 (6) international trade activities are inextricably
2 tied to domestic economic developments; thus there
3 should be consistency between domestic and interna-
4 tional economic policies with the objective of strength-
5 ening the United States economy generally, increasing
6 the financial and competitive capabilities of United
7 States industry and improving the income and working
8 conditions of United States workers;

9 (7) the United States needs an aggressive policy
10 which takes positive action to promote United States
11 exports and improve the competitiveness of United
12 States industry rather than passively awaiting currency
13 and price changes, foreign trade barriers, and other in-
14 ternational developments; and

15 (8) previous policies and programs have not
16 achieved adequate improvement in United States
17 export performance and therefore must be supplement-
18 ed and supplanted by other measures designed to serve
19 this end.

20 SEC. 102. PURPOSES.

21 The purposes of this Act are—

22 (1) to improve the international balance-of-pay-
23 ments and trade positions of the United States by es-
24 tablishing a national export policy that makes export
25 expansion a national priority;

1 (2) to achieve consistency and harmony of purpose
2 between Government policies and practices that affect
3 exports in order to provide a more coherent and effective
4 implementation of export expansion policies;

5 (3) to declare it the policy of the United States
6 Government to provide strong support for United
7 States exporters by utilizing the maximum available
8 resources of the United States Government to promote
9 the export of United States goods and services except
10 where contrary to the national security or national economic
11 interests;

12 (4) to expand the Nation's exports of goods and
13 services by enhancing the ability and encouraging the
14 private sector to cooperate fully with Government in
15 fostering and facilitating export expansion;

16 (5) to increase understanding of the benefits of exports
17 by establishing educational programs and other
18 awareness activities that will change attitudes;

19 (6) to improve the competitiveness of United
20 States industry in international markets by making
21 adequate export credits available to exporters of all
22 sizes that are flexible enough to meet the competition;

23 (7) to offer incentives to United States industry to
24 export through adjustments in the United States tax
25 system;

(8) to clarify, modify, or eliminate existing laws, rules, or regulations that unduly burden or disadvantage exporters;

(9) to institute programs that provide specific tools of the trade and a better trading environment for small and medium-sized firms to develop export markets;

(10) to encourage continuation of efforts to reduce foreign barriers to United States exports and unfair practices through international negotiations and agreements; and

(11) to ensure that all Government agencies in a position to assist export expansion efforts are properly set up to do so and make adjustments in functions as appropriate to provide adequate support to exports.

TITLE II—EXPORT FINANCING

PART 1—FINDINGS AND PURPOSE

SEC. 201. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) export financing has become an increasingly important factor in determining export sales;

(2) there is a growing tendency by the major trading partners of the United States to resort to the use of predatory financing arrangements to gain competitive advantage for their exporters;

1 (3) other major trading countries have been un-
2 willing to negotiate an end to such practices and have
3 rejected a series of United States proposals to
4 strengthen provisions of the International Arrangement
5 on Guidelines for Officially Supported Export Credits;

6 (4) since the President concluded in March 1979
7 that further international negotiations would not be
8 productive at that time, and negotiations have not ad-
9 vanced significantly since then, measures to strengthen
10 programs of the Export-Import Bank of the United
11 States are required to insure continued United States
12 export competitiveness;

13 (5) the Export-Import Bank is not adequately
14 equipped to meet foreign officially supported export
15 credit competition; and

16 (6) the ability of the Export-Import Bank to con-
17 duct its business in an efficient and timely manner is
18 hampered both by the congressional appropriations
19 process and the lack of continuity among the Bank's
20 directors.

21 (b) PURPOSE.—It is the purpose of this title—

22 (1) to provide the authority for the Export-Import
23 Bank of the United States to engage in the use of ex-
24 traordinary measures of export finance to counter and

ultimately discourage the use of such measures by other major trading countries;

(2) to give the Export-Import Bank additional resources to enable United States exporters to compete in countries that are not traditional markets for United States exports; and

(3) to remove the institutional obstacles to the efficient functioning of the Export-Import Bank.

PART 2—COMPETITIVE EXPORT FINANCING

SEC. 221. EXPORT-IMPORT BANK TO PROVIDE COMPETITIVE FINANCING.

Section 2(b)(1)(A) of the Export-Import Bank Act of 1945 is amended by inserting after the third sentence thereof the following: "The Bank shall provide programs of export finance which are comparable in structure to those extraordinary official export credit measures offered by the principal countries whose exporters compete with United States exporters. Pursuant to such programs, the Bank shall offer export credit on rates, terms, and conditions competitive with those offered by other major trading countries. The Bank, at its discretion, shall use such programs to meet foreign official export credit competition until such time as the use of extraordinary measures of official export credit financing is prescribed in international agreements to which the United States is a party. For the purpose of this subsection, the term

1 'extraordinary measures of official export credit financing'
2 shall include, but not be limited to, programs of highly
3 concessional mixed credits, local cost financing, foreign cur-
4 rency financing, and lines of credit arrangements.'".

5 **SEC. 222. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated to the Export-
7 Import Bank, without fiscal year limitation, not to exceed
8 \$1,000,000,000 to achieve the purposes of the amendment
9 made by section 221 of this subpart.

10 **SEC. 223. REPORTS ON ADEQUACY OF APPROPRIATIONS.**

11 Within 60 days after section 221 becomes effective, and
12 annually thereafter, the Export-Import Bank of the United
13 States shall report to the Congress as to whether any addi-
14 tional appropriations or increases in overall commitment au-
15 thority or annual ceiling levels are necessary to achieve the
16 purposes of this subpart.

17 **SEC. 224. EFFECTIVE DATE FOR SECTION 221.**

18 (a) **IN GENERAL.**—Section 221 shall take effect 6
19 months after the date of enactment of this Act. The President
20 may defer the effective date of section 221 for an additional
21 period of not to exceed 6 months if—

22 (1) he determines that international agreements
23 have or will be concluded which put United States and
24 foreign exporters in a substantially equal competitive
25 position with respect to official export finance, and

1 (2) he reports to Congress prior to and following
2 such deferral period as to progress achieved in negoti-
3 ating an end to predatory export financing.

4 (b) **TERMINATION DATE.**—This subpart, and the
5 amendment made by section 221 shall cease to be in effect on
6 September 30, 1983, and on such date, section 2(b)(1)(A) of
7 the Export-Import Bank Act of 1945 is amended to read as
8 it would without the amendment made by section 221 of this
9 subpart.

10 **SEC. 225. EXPORT EXPANSION FACILITY AMENDMENTS.**

11 (a) **IN GENERAL.**—Section 1(a) of Public Law 90-390
12 (12 U.S.C. 635j(a)) is amended to read as follows:

13 “(a) It is the policy of the Congress that the Export-
14 Import Bank of the United States (hereinafter referred to as
15 the ‘Bank’) should, particularly in the presence of foreign of-
16 ficially supported export credit competition, facilitate through
17 loans, guarantees, and insurance (including coinsurance and
18 reinsurance) exports to countries which, in the judgment of
19 the Board of Directors of the Bank—

20 “(1) do not currently have sufficient access to in-
21 ternational credit facilities to finance additional imports
22 from the United States;

23 “(2) are demonstrating reasonable progress
24 toward economic stabilization and development;

1 “(3) offer adequate formal assurances of repay-
2 ment or foreign exchange availability through govern-
3 ment or other official trade or monetary authorities;
4 and

5 “(4) could make a significant contribution to the
6 long-term interests of the United States through in-
7 creased trade.”.

8 (b) INCREASE IN CONTRACTUAL LIABILITY LIMIT.—
9 Section 1(b) of Public Law 90-390 (12 U.S.C. 635j(b)) is
10 amended by striking out “\$500,000,000” and inserting in
11 lieu thereof “\$1,000,000,000”.

12 (c) EXPORT EXPANSION FACILITY.—Section 1 of
13 Public Law 90-390 (12 U.S.C. 635j) is amended by adding
14 at the end thereof the following:

15 “(d) The activities authorized by this Act shall be car-
16 ried out through a facility designated as the ‘Export Expan-
17 sion Facility’, and all loans, guarantees, and insurance made
18 under the authority of this Act shall be assigned to the
19 Export Expansion Facility.”.

20 (d) CAPITALIZATION OF FACILITY.—Public Law
21 90-390 is amended by adding at the end thereof the
22 following:

23 “SEC. 6. The Export Expansion Facility shall be cap-
24 italized during the first year after the date of enactment of
25 the National Export Policy Act of 1980 in the amount of

1 \$25,000,000 which shall be set aside from the Bank's accu-
2 mulated earnings. To ensure the continuing availability of
3 funds thereafter, the Board of Directors of the Bank shall
4 determine annually that portion of the Bank's earnings
5 needed to be retained for general purposes, and shall specify
6 that portion needed to capitalize the Export Expansion Fa-
7 cility. In any event, for each year thereafter through 1985,
8 not less than 30 per centum of the net income of the Bank or
9 \$20,000,000, whichever is less, shall be set aside each year
10 for the Export Expansion Facility."

11 **SEC. 226. EXPORT-IMPORT BANK BOARD OF DIRECTORS.**

12 The fifth sentence of section 3(c) of the Export-Import
13 Bank Act of 1945 is amended to read as follows: "The term
14 of office of each director, including the Chairman and the
15 Vice Chairman, shall be 10 years, except that of the direc-
16 tors first appointed pursuant to this sentence, one shall serve
17 for a term of 2 years, one shall serve for a term of 4 years,
18 one shall serve for a term of 6 years, one shall serve for
19 a term of 8 years, and one shall serve for a term of 10 years,
20 as designated by the President at the time of the
21 appointment."

22 **SEC. 227. LEGISLATIVE CONSIDERATION OF LIMITS ON**
23 **EXPORT-IMPORT BANK.**

24 Beginning in 1981, the Appropriations Committees of
25 the House of Representatives and the Senate shall consider

1 limitations on the credit, guaranty, and insurance activities of
2 the Export-Import Bank when they consider appropriations
3 for international trade activities of the United States rather
4 than when they consider appropriations for foreign assistance
5 activities of the United States.

6 TITLE III—EXPORT-RELATED TAX POLICY

7 SEC. 301. FINDINGS; CONCLUSIONS.

8 (a) FINDINGS.—The Congress finds that—

9 (1) certain provisions of the Tax Code concerning
10 the taxation of income earned abroad discourage
11 United States citizens and businesses from undertaking
12 important economic activities which would contribute
13 significantly to an expansion of exports from the
14 United States, which would open foreign markets to
15 American products, and which would materially im-
16 prove our balance of trade and payments, and that
17 such provisions place United States businesses at a
18 competitive disadvantage and increase their costs by
19 imposing a higher tax burden than is borne by many
20 foreign competitors;

21 (2) certain provisions of the Tax Code concerning
22 reserves for bad debts arising from exports, certain re-
23 search and experimental expenditures, and foreign cur-
24 rency losses on export receivables discourage United

1 States businesses from engaging in export trade and
2 commerce;

3 (3) certain provisions of the Tax Code unfairly pe-
4 nalize United States exporters whose business is ad-
5 versely affected by war, civil unrest, or similar condi-
6 tions in foreign nations; and

7 (4) such provisions, by discouraging United States
8 businesses from engaging in foreign trade and com-
9 merce, cause a loss of jobs and income in the Ameri-
10 can economy.

11 (b) CONCLUSIONS.—The Congress concludes that—

12 (1) the Government should actively promote the
13 interest and participation of United States businesses in
14 foreign trade and should eliminate the tax disincentives
15 which unnecessarily impede United States exports; and

16 (2) removing tax disincentives should encourage
17 United States businesses to engage in foreign trade
18 and commerce, thereby improving our balance of pay-
19 ments and providing jobs and income for American
20 workers.

21 **SEC. 302. TAXATION OF AMERICANS OVERSEAS.**

22 (a) **PARTIAL EXCLUSION FOR EARNED INCOME FROM**
23 **SOURCES WITHOUT THE UNITED STATES.**—Section 911 of
24 the Internal Revenue Code of 1954 (relating to income

1 earned by individuals in certain camps) is amended to read as
2 follows:

3 **"SEC. 911. EARNED INCOME FROM SOURCES WITHOUT THE**
4 **UNITED STATES.**

5 **"(a) GENERAL RULE.**—In the case of an individual
6 who is—

7 **"(1)** a citizen of the United States and who estab-
8 lishes to the satisfaction of the Secretary that he has
9 been a bona fide resident of a foreign country or coun-
10 tries for an uninterrupted period which includes an
11 entire taxable year, or

12 **"(2)** a citizen or resident of the United States and
13 who, during any period of 12 consecutive months, is
14 present in a foreign country or countries during at
15 least 330 full days in such period,

16 there shall be excluded from gross income and exempt from
17 taxation under this subtitle amounts received from sources
18 within a foreign country or countries (except amounts paid by
19 the United States or any agency thereof) which constitute
20 earned income attributable to services performed during the
21 period of bona fide residence or during the 12-month period,
22 whichever is appropriate.

23 **"(b) DEFINITION OF EARNED INCOME.**—For purposes
24 of this section, the term 'earned income' means wages, sala-
25 ries, or professional fees, and other amounts received as com-

1 pensation for personal services actually rendered, but does
2 not include that part of the compensation derived by the tax-
3 payer for personal services rendered by him to a corporation
4 which represents a distribution of earnings or profits rather
5 than a reasonable allowance as compensation for the personal
6 services actually rendered. In the case of a taxpayer engaged
7 in a trade or business in which both personal services and
8 capital are material income-producing factors, under regula-
9 tions prescribed by the Secretary, a reasonable allowance as
10 compensation for the personal services rendered by the tax-
11 payer, not in excess of 30 percent of his share of the net
12 profits of such trade or business, shall be considered as
13 earned income.

14 “(c) SPECIAL RULES.—For the purpose of computing
15 the amount excludible under subsection (a)—

16 “(1) LIMITATIONS ON AMOUNT OF EXCLU-
17 SION.—The amount excluded from the gross income of
18 an individual under subsection (a) for any taxable year
19 shall not exceed an amount computed on a daily basis
20 at an annual rate of—

21 “(A) \$50,000, or

22 “(B) \$65,000, in the case of an individual
23 described in subsection (a)(1), but only with re-
24 spect to that portion of such taxable year occur-
25 ring after the individual has been a bona fide resi-

1 dent of a foreign country or countries for an unin-
2 interrupted period of 3 consecutive years.

3 “(2) **ATTRIBUTION TO YEAR IN WHICH SERVICES**
4 **ARE PERFORMED.**—For purposes of applying para-
5 graph (1), amounts received shall be considered re-
6 ceived in the taxable year in which the services to
7 which the amounts are attributable are performed.

8 “(3) **TREATMENT OF COMMUNITY INCOME.**—In
9 applying paragraph (1) with respect to amounts re-
10 ceived from services performed by a husband or wife
11 which are community income under community
12 property laws applicable to such income, the aggregate
13 amount excludible, under subsection (a) from the gross
14 income of such husband and wife shall equal the
15 amount which would be excludible if such amounts did
16 not constitute such community income.

17 “(4) **REQUIREMENT AS TO TIME OF RECEIPT.**—
18 No amount received after the close of the taxable year
19 following the taxable year in which the services to
20 which the amounts are attributable are performed may
21 be excluded under subsection (a).

22 “(5) **CERTAIN AMOUNTS NOT EXCLUDIBLE.**—No
23 amount—

24 “(A) received as a pension or annuity, or

“(B) included in gross income by reason of section 402(b) (relating to taxability of beneficiary of nonexempt trust), section 403(c) (relating to taxability of beneficiary under a nonqualified annuity), or section 403(d) (relating to taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations), may be excluded under subsection (a).

“(6) TEST OF BONA FIDE RESIDENCE.—A statement by an individual who has earned income from sources within a foreign country to the authorities of that country that he is not a resident of that country, if he is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings shall be conclusive evidence with respect to such earnings that he is not a bona fide resident of that country for purposes of subsection (a).

“(7) FOREIGN TAXES PAID ON EXCLUDED INCOME NOT CREDITABLE OR DEDUCTIBLE.—An individual shall not be allowed, as a deduction other than the deduction allowed by section 217 (relating to moving expenses) or as a credit against the tax imposed by this chapter, any credit for the amount of taxes paid or accrued to a foreign country or possession of the United States, to the extent that such de-

1 duction or credit is properly allocable to or chargeable
2 against amounts excluded from gross income under this
3 subsection.

4 “(8) WAIVER OF PERIOD OF STAY IN FOREIGN
5 COUNTRY.—For purposes of paragraphs (1) and (2) of
6 subsection (a), an individual who for any period is a
7 bona fide resident of or is present in a foreign country
8 and who—

9 “(A) leaves such foreign country—

10 “(i) during any period during which the
11 Secretary determines, after consultation with
12 the Secretary of State, that individuals were
13 required to leave such foreign country be-
14 cause of war, civil unrest, or similar adverse
15 conditions in such foreign country which pre-
16 cluded the normal conduct of business by
17 such individuals, and

18 “(ii) before meeting the requirements of
19 such paragraphs (1) and (2), and

20 “(B) establishes to the satisfaction of the
21 Secretary that he could reasonably have been ex-
22 pected to have met such requirements, shall be
23 treated as having met such requirements with re-
24 spect to that period during which he was a bona

1 fide resident or was present in the foreign
2 country.

3 This paragraph shall apply only with respect to periods
4 an individual was a bona fide resident of or present in
5 a foreign country and did not meet the requirements of
6 subsection (a) (1) or (2) with respect to such periods be-
7 cause he left the foreign country after September 1,
8 1978.”.

9 (b) DEDUCTION FOR HOUSING EXPENSES.—Section
10 913 of the Internal Revenue Code of 1954 is amended to
11 read as follows:

12 “SEC. 913. DEDUCTION FOR CERTAIN HOUSING EXPENSES OF
13 LIVING ABROAD.

14 “(a) ALLOWANCE OF DEDUCTION.—In the case of an
15 individual who is—

16 “(1) a citizen of the United States and who estab-
17 lishes to the satisfaction of the Secretary that he has
18 been a bona fide resident of a foreign country or coun-
19 tries for an uninterrupted period which includes an
20 entire taxable year, or

21 “(2) a citizen or resident of the United States and
22 who during any period of 12 consecutive months is
23 present in a foreign country or countries during at
24 least 330 full days in such period,

1 there shall be allowed as a deduction for such taxable year or
2 for any taxable year which contains part of such period, the
3 qualified housing expenses set forth in subsection (b).

4 “(b) QUALIFIED HOUSING EXPENSES.—

5 “(1) IN GENERAL.—For purposes of this section,
6 the term ‘qualified housing expenses’ means the excess
7 of—

8 “(A) the individual’s housing expenses, over

9 “(B) the individual’s base housing amount.

10 “(2) HOUSING EXPENSES.—

11 “(A) IN GENERAL.—For purposes of para-
12 graph (1), the term ‘housing expenses’ means the
13 reasonable expenses paid or incurred during the
14 taxable year by or on behalf of the individual for
15 housing for the individual (and, if they reside with
16 him, for his spouse and dependents) in a foreign
17 country. Such term—

18 “(i) except as provided in clause (ii), in-
19 cludes expenses attributable to the housing
20 (such as security, utilities, and insurance),
21 and

22 “(ii) does not include interest and taxes
23 of the kind deductible under sections 163 and
24 164 or any amount allowable as a deduction
25 under section 216(a).

1 “(B) PORTION WHICH IS LAVISH OR EX-
2 TRAVAGANT NOT ALLOWED.—For purposes of
3 subparagraph (A), housing expenses shall not be
4 treated as reasonable to the extent such expenses
5 are lavish or extravagant under the circum-
6 stances.

7 “(3) BASE HOUSING AMOUNT.—For purposes of
8 paragraph (1) the term ‘base housing amount’ means
9 16 percent of the salary of an employee of the United
10 States whose salary grade is step 1 of grade GS-14,
11 said salary amount to be calculated on a daily basis for
12 the period determined in accordance with paragraph
13 (4)(B) of this subsection.

14 “(4) PERIODS TAKEN INTO ACCOUNT.—

15 “(A) IN GENERAL.—The expenses taken
16 into account under this subsection shall be only
17 those which are attributable to housing during pe-
18 riods for which—

19 “(i) the individual’s tax home is in a
20 foreign country, and

21 “(ii) the value of the individual’s hous-
22 ing is not excluded under section 119.

23 “(B) DETERMINATION OF BASE HOUSING
24 AMOUNT.—The base housing amount shall be de-

1 terminated for the periods referred to in subpara-
2 graph (A).

3 “(5) ONLY ONE HOUSE PER PERIOD.—If, but for
4 this paragraph, housing expenses for any individual
5 would be taken into account under paragraph (2) of
6 subsection (b) with respect to more than one abode for
7 any period, only housing expenses with respect to that
8 abode which bears the closest relationship to the indi-
9 vidual’s tax home shall be taken into account under
10 such paragraph (2) for such period.

11 “(c) REGULATIONS.—The Secretary shall prescribe
12 such regulations as may be necessary or appropriate to carry
13 out the purposes of this section, including regulations provid-
14 ing rules—

15 “(1) for cases where a husband and wife each
16 have earned income from sources outside the United
17 States, and

18 “(2) for married individuals filing separate
19 returns.”.

20 (c) CLERICAL AMENDMENTS.—

21 (1) The table of sections for subpart B of part III
22 of subchapter N of chapter 1 of such Code is amended
23 by striking out the item relating to section 911 and in-
24 serting in lieu thereof the following:

“Sec. 911. Earned income from sources without the United States.”.

(2) Sections 43(c)(1)(B), 1302(b)(2)(A)(i), 1304(b)(1), 1402(a)(8), 6012(c), and 6091(b)(1)(B)(iii) of such Code are each amended by striking out “relating to income earned by employees in certain camps” and inserting in lieu thereof “relating to earned income from sources without the United States”.

(3) The table of sections for subpart B of part III of subchapter N of chapter 1 of such Code is amended by striking out the item relating to section 913 and inserting in lieu thereof the following:

“Sec. 913. Deduction for certain housing expenses of living abroad.”.

(4) Section 62 of such Code (relating to definition of adjusted gross income) is amended by inserting “housing” after “certain” in the caption of paragraph (14).

(d) EFFECTIVE DATE.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to taxable years beginning after December 31, 1980.

(2) ELECTION OF PRIOR LAW.—

(A) A taxpayer may elect not to have the amendments made by this section apply with respect to any taxable year beginning after December 31, 1977, and before January 1, 1981.

1 (B) An election under this paragraph shall be
2 filed with the taxpayer's timely filed return for
3 the first taxable year beginning after December
4 31, 1978.

5 **SEC. 303. REASONABLE ESTIMATION OF BAD DEBT RESERVES**
6 **FOR EXPORT RECEIVABLES.**

7 Subsection (c) of section 166 of the Internal Revenue
8 Code of 1954 (relating to reserve for bad debts) is amended
9 to read as follows:

10 “(c) **RESERVE FOR BAD DEBTS.**—

11 “(1) **GENERAL RULE.**—In lieu of any deduction
12 under subsection (a), there shall be allowed (in the dis-
13 cretion of the Secretary) a deduction for a reasonable
14 addition to a reserve for bad debts.

15 “(2) **REASONABLE ESTIMATION FOR BAD DEBTS**
16 **IN CONNECTION WITH EXPORTS.**—

17 “(A) **SEPARATE RESERVE.**—A taxpayer en-
18 gaged in the trade or business of selling export
19 property or services for use outside the United
20 States may establish a separate reserve for bad
21 debts with respect to that trade or business.

22 “(B) **ANNUAL ADDITION.**—The amount
23 added to any such separate reserve for the taxable
24 year shall not exceed the greater of—

1 “(i) 15 percent of the taxable income
2 from sources without the United States
3 (within the meaning of section 862(b)) for the
4 taxable year attributable to such trade or
5 business, or

6 “(ii) 2 percent of the taxpayer’s export
7 receivables outstanding as of the close of the
8 taxable year.

9 “(C) MAXIMUM RESERVE.—No amount may
10 be added to any such reserve for the taxable year
11 which would cause the total amount credited to
12 the reserve as of the close of the taxable year to
13 exceed 5 percent of the taxpayer’s export receiv-
14 ables outstanding as of the close of the taxable
15 year.

16 “(D) DEFINITIONS.—For purposes of this
17 paragraph—

18 “(i) EXPORT RECEIVABLES.—The term
19 ‘export receivables’ means accounts receiv-
20 able for export receipts.

21 “(ii) EXPORT RECEIPTS.—The term
22 ‘export receipts’ means gross receipts from
23 the sale of export property or services for
24 use outside the United States.

1 “(iii) EXPORT PROPERTY.—The term
2 ‘export property’ has the same meaning as
3 such term has in section 971(e).”.

4 SEC. 304. CLARIFICATION OF TAX TREATMENT OF CERTAIN
5 RESEARCH AND EXPERIMENTAL EXPENDI-
6 TURES.

7 Section 174 of the Internal Revenue Code of 1954 (re-
8 lating to research and experimental expenditures) is amended
9 by redesignating subsection (e) as (f), and by inserting imme-
10 diately after subsection (d) the following new subsection:

11 “(e) CERTAIN EXPORT-RELATED EXPENDITURES.—
12 At the election of the taxpayer, made in accordance with
13 regulations prescribed by the Secretary, amounts paid or in-
14 curred for the following items may be treated as research or
15 experimental expenditures under subsection (a) or (b):

16 “(1) FOREIGN MARKET STUDIES, ETC.—Amounts
17 paid or incurred in connection with the survey or anal-
18 ysis of foreign markets and products.

19 “(2) FOREIGN MARKETING EXPENSES.—
20 Amounts paid or incurred in connection with market-
21 ing, outside the United States, goods produced in the
22 United States, including, but not limited to, amounts
23 paid or incurred in adapting United States products to
24 meet foreign market requirements.

1 “(3) FOREIGN PATENT COSTS.—Amounts paid or
 2 incurred in connection with the application for, or
 3 maintenance of, international and foreign patents and
 4 trademarks (without regard to whether the taxpayer is
 5 the owner of, or the owner of the rights to, the United
 6 States patent for the item) for use in the taxpayer’s
 7 trade or business.”.

8 SEC. 305. CLARIFICATION OF THE TAX TREATMENT OF FOR-
 9 EIGN CURRENCY FLUCTUATION LOSSES ON
 10 EXPORT RECEIVABLES.

11 Section 165 of the Internal Revenue Code of 1954 (re-
 12 lating to losses) is amended by redesignating subsection (i) as
 13 subsection (j), and by inserting after subsection (h) the follow-
 14 ing new subsection:

15 “(i) LOSSES ATTRIBUTABLE TO FOREIGN CURRENCY
 16 FLUCTUATIONS ON EXPORT RECEIVABLES.—

17 “(1) GENERAL RULE.—At the election of the tax-
 18 payer, there shall be allowed as a deduction an amount
 19 equal to the foreign currency fluctuation loss of the
 20 taxpayer for the taxable year with respect to export
 21 receivables. The election shall be made at such time
 22 and in such manner as the Secretary may prescribe,
 23 and may be made on a currency-by-currency basis.

24 “(2) DEFINITIONS; SPECIAL RULES.—For pur-
 25 poses of this subsection—

1 “(A) FOREIGN CURRENCY FLUCTUATION
2 LOSS.—The term ‘foreign currency fluctuation
3 loss’ means the amount by which the value,
4 stated in United States dollars, of an export re-
5 ceivable, payable in foreign currency, on the later
6 of—

7 “(i) the first day of the taxable year, or

8 “(ii) the date on which the export re-
9 ceivable was created,
10 exceeds the value of the export receivable, stated
11 in United States dollars, on the last day of the
12 taxable year.

13 “(B) EXPORT RECEIVABLE.—The term
14 ‘export receivable’ has the same meaning as in
15 section 166(c)(2)(D)(i).

16 “(C) DEDUCTION ALLOWED ONLY TO TAX-
17 PAYER WHOSE TRADE OR BUSINESS CREATED
18 THE EXPORT RECEIVABLE.—The deduction al-
19 lowed by this subsection shall be allowed only to
20 the taxpayer whose trade or business created the
21 export receivable with respect to which the de-
22 duction is allowable.

23 “(3) RECAPTURE UPON RECEIPT.—If the amount
24 received by the taxpayer in satisfaction of an export
25 receivable exceeds—

1 “(A) the value of that receivable, stated in
2 United States dollars, on the date on which it was
3 created, reduced by

4 “(B) the sum of the amounts allowed for all
5 taxable years under this subsection with respect
6 to that receivable,

7 then, for purposes of this chapter, the amount realized
8 by the taxpayer in satisfaction of that receivable shall
9 be increased by the amount of such excess.

10 “(4) APPLICATION WITH SECTION 166.—For the
11 purpose of determining the amount of the deduction al-
12 lowable under section 166(a) for any taxable year for a
13 debt which is an export receivable for which a deduc-
14 tion has been claimed under this subsection, the adjust-
15 ed basis shall be reduced by the sum of any deductions
16 allowed under this subsection for that and all prior tax-
17 able years.

18 “(5) REGULATIONS.—The Secretary shall pre-
19 scribe such regulations as may be necessary to carry
20 out this subsection.”.

21 **SEC. 306. DEADLINE FOR EXEMPTING EXPORTS FROM THE**
22 **MANUFACTURERS EXCISE TAX.**

23 (a) IN GENERAL.—Section 4221(b) of the Internal Rev-
24 enue Code of 1954 (relating to certain tax-free sales) is
25 amended by adding at the end thereof the following: “The

1 Secretary may extend the 6-month deadline with respect to
2 exports for an additional 12 months if he determines, after
3 consultation with the Secretary of State, that exports were
4 delayed because of war, civil unrest, or similar adverse condi-
5 tions in a foreign nation.”.

6 (b) EFFECTIVE DATE.—The amendment made by this
7 section shall apply to taxable years beginning after December
8 31, 1978.

9 SEC. 307. USE OF FOREIGN TRADE ZONES IN EXPORTING.

10 (a) The Act of June 18, 1934 (commonly known as the
11 Foreign Trade Zones Act; 19 U.S.C. 81a et seq.), is amend-
12 ed by inserting after section 3 the following new section:

13 “SEC. 3A. (a) The Secretary is authorized to approve
14 the duty-free entry of—

15 “(1) machinery and materials to be used solely in
16 the manufacture or production of goods in a zone if
17 such goods are not subsequently entered into the cus-
18 toms territory of the United States, and

19 “(2) fuel and materials consumed solely in the
20 manufacture or production of such goods, in the same
21 manner and subject to the same limitations as foreign
22 merchandise brought into such zone without being sub-
23 ject to the customs laws of the United States under
24 section 3 of this Act. The Secretary shall approve such
25 duty-free entry if he determines that such action con-

1 forms to an application approved by the Board under
2 subsection (b).

3 “(b) Any grantee may apply to the Board for the appli-
4 cation of the provisions of this section to any project con-
5 ducted, or proposed to be conducted, within the zone, operat-
6 ed and maintained by the grantee. The Board may approve
7 any such application if it determines that—

8 “(1) the application of this section is essential to
9 the successful operation of the project which is the
10 subject of the application;

11 “(2) domestic machinery, materials, and fuel are
12 not available at prices comparable to the foreign ma-
13 chinery, materials, and fuel which are proposed to be
14 used or consumed in the operation of such project, or
15 at prices which would permit the successful operation
16 of such project;

17 “(3) the total value of the goods to be manufac-
18 tured or produced and exported will exceed the duties
19 which (but for the application of this section) would
20 apply to the entry of machinery, materials, and fuel to
21 be used or consumed in the manufacture or production
22 of such goods and the total retail value of such goods
23 would be in excess of \$100,000; and

24 “(4) the establishment and operation of the project
25 for which the application is made would not, deter-

1 mined by the Board, significantly reduce the export op-
2 erations of similar existing businesses.

3 “(c) Upon receipt of each application, the Board shall
4 publish a notice in the Federal Register to solicit the views of
5 the general public, to be submitted to the Board within 30
6 days after publication of the notice. The Board shall have 30
7 days after such views are submitted to reject or approve the
8 application, except that it may order an additional 60-day
9 extension for the purpose of requiring the applicant to submit
10 additional supporting information. A final determination shall
11 be made no later than 120 days after submission of the
12 application.

13 “(d) Approval granted under subsections (b) and (c) of
14 this section shall be valid for 6 years, and every interested
15 manufacturer shall reapply for approval with the Board under
16 subsections (b) and (c) at 6-year intervals.

17 “(e) Machinery, fuel, materials, or manufactured goods
18 imported pursuant to this section shall be subject to duty and
19 taxation at regular rates if subsequently entered into the cus-
20 toms territory of the United States.

21 “(f) The Board shall promulgate such rules and regula-
22 tions as it considers necessary to carry out the purposes of
23 this section. Such rules and regulations shall be designed in
24 such a way as to eliminate unnecessary paperwork, to sim-
25 plify forms, and to expedite all proceedings.”.

1 (b) **REPORT.**—Section 16(c) of such Act is amended by
2 inserting after “grantee.” the following new sentence: “The
3 report shall also contain a summary of activities and pro-
4 grams of the Board in each zone intended to increase the use
5 of foreign trade zones to expand United States exports and
6 such proposals as the Secretary shall make to expand the use
7 of foreign trade zones in exporting.”.

8 **SEC. 308. APPLICATION OF DISC RULES TO EXPORT TRADING**
9 **COMPANIES.**

10 (a) **ELIGIBLE ORGANIZATIONS.**—Paragraph (3) of sec-
11 tion 992(d) of the Internal Revenue Code of 1954 (relating to
12 ineligible corporations) is amended by inserting before the
13 comma at the end thereof the following: “(other than a finan-
14 cial institution which is a banking organization as defined in
15 section 625(a)(1) of this Act investing in the voting stock of
16 an export trading company (as defined in section 623(a)(5) of
17 this Act) in accordance with the provisions of section 105 of
18 this Act)”.

19 (b) **RECEIPTS FROM SERVICES.**—Paragraph (1) of sec-
20 tion 993(a) of the Internal Revenue Code of 1954 (relating to
21 qualified export receipts of a DISC) is amended—

22 (1) by striking out “and” at the end of subpara-
23 graph (G),

1 (2) by striking out the period at the end of sub-
2 paragraph (H) and inserting in lieu thereof “, and”,
3 and

4 (3) by adding at the end thereof the following new
5 subparagraph:

6 “(I) in the case of a DISC which is an
7 export trading company (as defined in section
8 623(a)(5) of the National Export Policy Act of
9 1980), or which is a subsidiary of such a compa-
10 ny, gross receipts from the export of services pro-
11 duced in the United States (as defined in section
12 623(a)(3) of such Act) or from export trade serv-
13 ices (as defined in section 623(a)(4) of such
14 Act).”.

15 (c) PUBLICITY.—The Secretary of Commerce, after
16 consultation with the Secretary of the Treasury, shall devel-
17 op, prepare, and distribute to interested parties, including po-
18 tential exporters, information concerning the manner in
19 which an export trading company can utilize the provisions of
20 part IV of subchapter N of chapter 1 of the Internal Revenue
21 Code of 1954 (relating to domestic international sales corpo-
22 rations), and any advantages or disadvantages which may
23 reasonably be expected from the election of DISC status or
24 the establishment of a subsidiary corporation which is a
25 DISC.

1 (d) **EFFECTIVE DATE.**—The amendments made by this
 2 section shall apply with respect to taxable years beginning
 3 after December 31, 1980.

4 **SEC. 309. SUBCHAPTER S STATUS FOR EXPORT TRADING COM-**
 5 **PANIES.**

6 (a) **IN GENERAL.**—Paragraph (2) of section 1371(a) of
 7 the Internal Revenue Code of 1954 (relating to the definition
 8 of a small business corporation) is amended by inserting “,
 9 except in the case of the shareholders of an export trading
 10 company (as defined in section 623(a)(5) of the National
 11 Export Policy Act of 1980) if such shareholders are other-
 12 wise small business corporations for the purpose of this sub-
 13 chapter,” after “shareholder”.

14 (b) **CONFORMING AMENDMENT.**—The first sentence of
 15 section 1372(e)(4) of such Code (relating to foreign income) is
 16 amended by inserting “, other than an export trading com-
 17 pany,” after “small business corporation”.

18 (c) **EFFECTIVE DATE.**—The amendments made by this
 19 section shall apply with respect to taxable years beginning
 20 after December 31, 1980.

21 **TITLE IV—ANTITRUST**

22 **PART 1—FINDINGS AND CONCLUSIONS**

23 **SEC. 401. FINDINGS AND CONCLUSIONS.**

24 (a) **FINDINGS.**—The Congress finds that—

1 (1) the application of current United States anti-
2 trust laws to international trade activities serves as a
3 restraint on exports;

4 (2) the purpose of United States antitrust laws to
5 foster competition reflects a basic premise of our free
6 enterprise system;

7 (3) the domestic application of the antitrust laws
8 clearly—

9 (A) encourages efficient resource allocations,

10 (B) stimulates the use of efficient methods of
11 production and distribution,

12 (C) encourages progressive technology and
13 high productivity, and

14 (D) serves the public by affording goods and
15 services at the most reasonable price;

16 (4) the benefits of applying current antitrust laws
17 to United States trade overseas where, in many cases,
18 competition as understood in the United States does
19 not exist, are not so clear;

20 (5) the application of United States antitrust laws
21 to extraterritorial trading is highly complex and am-
22 biguous, making full compliance difficult and costly and
23 sometimes resulting in a restraint on exports rather
24 than an encouragement of competition;

1 (6) the difficulties antitrust laws present to export-
2 ers are compounded by the conflicting jurisdictions
3 over enforcement of those laws between the States and
4 the United States Department of Justice and Federal
5 Trade Commission, and assurances from one agency
6 that it will not prosecute a particular export trade ac-
7 tivity is not necessarily binding on the others and does
8 not preclude private treble damage litigation; and

9 (7) the obligations imposed upon the conduct and
10 structure of businesses by United States antitrust laws
11 have few parallels among major foreign competitors or
12 in most overseas markets for United States exports.

13 (b) CONCLUSIONS.—The Congress therefore concludes
14 that—

15 (1) decisions on the interpretation and enforce-
16 ment of United States antitrust laws should reflect the
17 national interest in expanded export trade and should
18 not restrain unnecessarily the United States ability to
19 be an aggressive exporter of goods and services;

20 (2) a comprehensive study of the international as-
21 pects of the United States antitrust laws, applicable
22 rules of court, related statutes, administrative proce-
23 dures, and their applications, consequences, and inter-
24 pretation by the courts and Federal agencies should be
25 undertaken to determine what reforms are required to

1 improve the ability of United States enterprises to
2 compete effectively abroad;

3 (3) changes in the antitrust laws for export trade
4 purposes should not tamper with their application to
5 domestic commerce;

6 (4) antitrust laws should permit normal interna-
7 tional business practices, particularly those regarding
8 product marketing techniques, licensing, and bidding
9 procedures, and should recognize the realities of widely
10 differing foreign markets as long as they do not ad-
11 versely affect domestic competition;

12 (5) the application of United States antitrust laws
13 to international activities must be clearly defined prior
14 to enforcement;

15 (6) uncoordinated and conflicting actions by agen-
16 cies with concurrent jurisdiction should be eliminated;

17 (7) the Webb-Pomerene Act should be amended to
18 allow business associations to obtain preclearance from
19 the Department of Commerce for the joint exporting of
20 goods or services that will grant antitrust immunity for
21 certified activities;

22 (8) a formal business review process should be es-
23 tablished at the Department of Justice to permit pre-
24 clearance with respect to the nonapplicability of anti-

trust laws to a firm's overseas activities that will assure against prosecution for antitrust violations; and (9) procedures for efficiently informing existing and potential exporters of legal requirements and their impact on specific categories of export transactions should be developed.

PART 2—REVISION OF WEBB-POMERENE ACT

SEC. 421. WEBB-POMERENE ACT AMENDMENTS.

(a) **PURPOSE.**—It is the purpose of this section to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

(b) **DEFINITIONS.**—The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

“SECTION 1. DEFINITIONS.

“As used in this Act—

“(1) **EXPORT TRADE.**—The term ‘export trade’ means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being ex-

1 ported from the United States or any territory thereof
2 to any foreign nation.

3 “(2) SERVICE.—The term ‘service’ means intangi-
4 ble economic output, including, but not limited to—

5 “(A) business, repair, and amusement
6 services;

7 “(B) management, legal, engineering, archi-
8 tectural, and other professional services; and

9 “(C) financial, insurance, transportation, and
10 communication services.

11 “(3) EXPORT TRADE ACTIVITIES.—The term
12 ‘export trade activities’ includes activities or agree-
13 ments in the course of export trade.

14 “(4) TRADE WITHIN THE UNITED STATES.—The
15 term ‘trade within the United States’ whenever used in
16 this Act means trade or commerce among the several
17 States or in any Territory of the United States, or in
18 the District of Columbia, or between any such Terri-
19 tory and another, or between any such Territory or
20 Territories and any State or States or the District of
21 Columbia, or between the District of Columbia and any
22 State or States.

23 “(5) ASSOCIATION.—The term ‘association’
24 means any combination, by contract or other arrange-
25 ment, of persons who are citizens of the United States,

1 partnerships which are created under and exist pursu-
2 ant to the laws of any State or of the United States, or
3 corporations which are created under and exist pursu-
4 ant to the laws of any State or of the United States.

5 “(6) EXPORT TRADING COMPANY.—The term
6 ‘export trading company’ means an export trading
7 company as defined in section 623(a)(5) of the National
8 Export Policy Act of 1980.

9 “(7) ANTITRUST LAWS.—The term ‘antitrust
10 laws’ means the antitrust laws defined in the first sec-
11 tion of the Clayton Act (15 U.S.C. 12) and section 4
12 of the Federal Trade Commission Act (15 U.S.C. 44),
13 and any State antitrust or unfair competition law.

14 “(8) SECRETARY.—The term ‘Secretary’ means
15 the Secretary of Commerce.

16 “(9) ATTORNEY GENERAL.—The term ‘Attorney
17 General’ means the Attorney General of the United
18 States.

19 “(10) COMMISSION.—The term ‘Commission’
20 means the Federal Trade Commission.”.

21 (c) ANTITRUST EXEMPTION.—The Webb-Pomerene
22 Act (15 U.S.C. 61–66) is amended by striking out the second
23 section (15 U.S.C. 62) and inserting in lieu thereof the
24 following:

1 "SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

2 "(a) ELIGIBILITY.—The export trade, export trade ac-
3 tivities, and methods of operation of any association, entered
4 into for the sole purpose of engaging in export trade, and
5 engaged in or proposed to be engaged in such export trade,
6 and the export trade and methods of operation of any export
7 trading company, that—

8 "(1) serve to preserve or promote export trade;

9 "(2) result in neither a substantial lessening of
10 competition or restraint of trade within the United
11 States nor a substantial restraint of the export trade of
12 any competitor of such association or export trading
13 company;

14 "(3) do not unreasonably enhance, stabilize, or de-
15 press prices within the United States of the goods,
16 wares, merchandise, or services of the class exported
17 by such association or export trading company;

18 "(4) do not constitute unfair methods of competi-
19 tion against competitors engaged in the export trade of
20 goods, wares, merchandise, or services of the class ex-
21 ported by such association or export trading company;

22 "(5) do not include any act which results, or may
23 reasonably be expected to result, in the sale for con-
24 sumption or resale within the United States of the
25 goods, wares, merchandise, or services exported by the

1 association or export trading company or its members;
2 and

3 “(6) do not constitute trade or commerce in the
4 licensing of patents, technology, trademarks, or know-
5 how, except as incidental to the sale of the goods,
6 wares, merchandise, or services exported by the associ-
7 ation or export trading company or its members,
8 shall, when certified according to the procedures set forth in
9 this Act, be eligible for the exemption provided in subsection
10 (b).

11 “(b) EXEMPTION.—An association or an export trading
12 company and its members with respect to its export trade,
13 export trade activities and methods of operation are exempt
14 from the operation of the antitrust laws as relates to their
15 respective export trade, export trade activities or methods of
16 operation that are specified in a certificate issued according
17 to the procedures set forth in the Act, carried out in conform-
18 ity with the provisions, terms, and conditions prescribed in
19 such certificate and engaged in during the period in which
20 such certificate is in effect. The subsequent revocation or in-
21 validation of such certificate shall not render the association
22 or its members, or an export trading company or its mem-
23 bers, liable under the antitrust laws for such trade, export
24 trade activities or methods of operation engaged in during
25 such period.

1 “(c) DISAGREEMENT OF ATTORNEY GENERAL OR
 2 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
 3 Act, the Attorney General or Commission has formally ad-
 4 vised the Secretary of disagreement with his determination to
 5 issue a proposed certificate, and the Secretary has nonethe-
 6 less issued such proposed certificate or an amended certifi-
 7 cate, the exemption provided by this section shall not be ef-
 8 fective until thirty days after the issue of such certificate.”.

9 (d) AMENDMENT OF SECTION 3.—The Webb-Pomerene
 10 Act (15 U.S.C. 61–66) is amended—

11 (1) by inserting immediately before section 3 (15
 12 U.S.C. 63) the following:

13 “SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
 14 ATIONS PERMITTED.”.

15 (2) by striking out “SEC. 3. That nothing” in sec-
 16 tion 3 and inserting in lieu thereof “Nothing”.

17 (e) ADMINISTRATION; ENFORCEMENT; REPORTS.—

18 (1) IN GENERAL.—The Webb-Pomerene Act (15
 19 U.S.C. 61–66) is amended by striking out sections 4
 20 and 5 (15 U.S.C. 64 and 65) and inserting in lieu
 21 thereof the following sections:

22 “SEC. 4. CERTIFICATION.

23 “(a) PROCEDURE FOR APPLICATION.—Any association
 24 or export trading company seeking certification under this

1 Act shall file with the Secretary a written application for
2 certification setting forth the following:

3 “(1) The name of the association or export trad-
4 ing company.

5 “(2) The location of all of the offices or places of
6 business of the association or export trading company
7 in the United States and abroad.

8 “(3) The names and addresses of all of the offi-
9 cers, stockholders, and members of the association, or
10 export trading company.

11 “(4) A copy of the certificate or articles of incor-
12 poration and bylaws, if the association, or export trad-
13 ing company is a corporation; or a copy of the articles,
14 partnership, joint venture, or other agreement or con-
15 tract under which the association or export trading
16 company conducts or proposes to conduct its export
17 trade activities or contract of association or export
18 trading company, if the association or export trading
19 company is unincorporated.

20 “(5) A description of the goods, wares, merchan-
21 dise, or services which the association or export trad-
22 ing company or their members export or propose to
23 export.

24 “(6) A description of the domestic and interna-
25 tional conditions, circumstances, and factors which

1 show that the association or export trading company
2 and its activities will serve a specified need in promot-
3 ing the export trade of the described goods, wares,
4 merchandise, or services.

5 “(7) The export trade activities in which the asso-
6 ciation or export trading company intends to engage
7 and the methods by which the association or export
8 trading company conducts or proposes to conduct
9 export trade in the described goods, wares, merchan-
10 dise, or services, including, but not limited to, any
11 agreements to sell exclusively to or through the associ-
12 ation, any agreements with foreign persons who may
13 act as joint selling agents, any agreements to acquire a
14 foreign selling agent, any agreements for pooling tangi-
15 ble or intangible property or resources, or any terri-
16 torial, price-maintenance, membership, or other restric-
17 tions to be imposed upon members of the association or
18 export trading company.

19 “(8) The names of all countries where export
20 trade in the described goods, wares, merchandise, or
21 services is conducted or proposed to be conducted by
22 or through the association or export trading company.

23 “(9) Any other information which the Secretary
24 may request concerning the organization, operation,
25 management, or finances of the association or export

1 trading company; the relation of the association or
2 export trading company to other associations, corpora-
3 tions, partnerships, and individuals; and competition or
4 potential competition, and effects of the association or
5 export trading company thereon. The Secretary may
6 request such information as part of an initial applica-
7 tion or as a necessary supplement thereto. The Secre-
8 tary may not request information under this paragraph
9 which is not reasonably available to the person making
10 application or which is not necessary for certification of
11 the prospective association or export trading company.

12 “(b) ISSUANCE OF CERTIFICATE.—

13 “(1) NINETY-DAY PERIOD.—The Secretary shall
14 issue a certificate to an association or export trading
15 company within ninety days after receiving the applica-
16 tion for certification or necessary supplement thereto if
17 the Secretary, after consultation with the Attorney
18 General and Commission, determines that the associ-
19 ation, its export trade, export trade activities and
20 methods of operation, or export trading company, and
21 its export trade, export trade activities and methods of
22 operation meet the requirements of section 2 of this
23 Act and that the association or export trading company
24 and its activities will serve a specified need in promot-
25 ing the export trade of the goods, wares, merchandise,

1 or services described in the application for certification.
2 The certificate shall specify the permissible export
3 trade, export trade activities and methods of operation
4 of the association or export trading company and shall
5 include any terms and conditions the Secretary deems
6 necessary to comply with the requirements of section 2
7 of this Act. The Secretary shall deliver to the Attorney
8 General and the Commission a copy of any certificate
9 that he proposes to issue. The Attorney General or
10 Commission may, within fifteen days thereafter, give
11 written notice to the Secretary of an intent to offer
12 advice on the determination. The Attorney General or
13 Commission may, after giving such written notice and
14 within forty-five days of the time the Secretary has de-
15 livered a copy of a proposed certificate, formally advise
16 the Secretary of disagreement with his determination.
17 The Secretary shall not issue any certificate prior to
18 the expiration of such forty-five day period unless he
19 has (A) received no notice of intent to offer advice by
20 the Attorney General or the Commission within fifteen
21 days after delivering a copy of a proposed certificate,
22 or (B) received any notice and formal advice of dis-
23 agreement or written confirmation that no formal dis-
24 agreement will be transmitted from the Attorney Gen-
25 eral and the Commission. After the forty-five day

1 period or, if no notice of intent to offer advice has been
2 given, after the fifteen-day period, the Secretary shall
3 either issue the proposed certificate, issue an amended
4 certificate, or deny the application. Upon agreement of
5 the applicant, the Secretary may delay taking action
6 for not more than thirty additional days after the forty-
7 five day period. Before offering advice on a proposed
8 certification, the Attorney General and Commission
9 shall consult in an effort to avoid, wherever possible,
10 having both agencies offer advice on any application.

11 “(2) EXPEDITED CERTIFICATION.—In those in-
12 stances where the temporary nature of the export trade
13 activities, deadlines for bidding on contracts or filling
14 orders, or any other circumstances beyond the control
15 of the association or export trading company which
16 have a significant impact on its export trade, make the
17 ninety-day period for application approval described in
18 paragraph (1) of this subsection, or an amended appli-
19 cation approval as provided in subsection (c) of this
20 section, impractical for the association or export trad-
21 ing company seeking certification, such association or
22 export trading company may request and may receive
23 expedited action on its application for certification.

24 “(3) APPEAL OF DETERMINATION.—If the Secre-
25 tary determines not to issue a certificate to an associ-

1 ation or export trading company which has submitted
2 an application or an amended application for certifica-
3 tion, then he shall—

4 “(A) notify the association or export trading
5 company of his determination and the reasons for
6 his determination, and

7 “(B) upon request made by the association or
8 export trading company afford it an opportunity
9 for a hearing with respect to that determination in
10 accordance with section 557 of title 5, United
11 States Code.

12 “(c) MATERIAL CHANGES IN CIRCUMSTANCES;
13 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
14 terial change in the membership, export trade, export trade
15 activities, or methods of operation, of an association or export
16 trading company then it shall report such change to the Sec-
17 retary and may apply to the Secretary for an amendment of
18 its certificate. Any application for an amendment to a certifi-
19 cate shall set forth the requested amendment of the certifi-
20 cate and the reasons for the requested amendment. Any re-
21 quest for the amendment of a certificate shall be treated in
22 the same manner as an original application for a certificate.
23 If the request is filed within thirty days after a material
24 change which requires the amendment, and if the requested

1 amendment is approved, then there shall be no interruption in
2 the period for which the certificate is in effect.

3 “(d) AMENDMENT OR REVOCATION OF CERTIFICATE
4 BY SECRETARY.—After notifying the association or export
5 trading company involved and after an opportunity for hear-
6 ing pursuant to section 554 of title 5, United States Code,
7 the Secretary, on his own initiative—

8 “(1) may require that the organization or oper-
9 ation of the association or export trading company be
10 modified to correspond with its certification, or

11 “(2) shall, upon a determination that the export
12 trade, export trade activities or methods of operation of
13 the association or export trading company no longer
14 meet the requirements of section 2 of this Act, revoke
15 the certificate or make such amendments as may be
16 necessary to satisfy the requirements of such section.

17 “(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
18 ATTORNEY GENERAL OR COMMISSION.—

19 “(1) The Attorney General or the Commission
20 may bring an action against an association or export
21 trading company or its members to invalidate, in whole
22 or in part, the certification on the ground that the
23 export trade, export trade activities or methods of op-
24 eration of the association or export trading company
25 fail or have failed, to meet the requirements of section

1 2 of this Act. The Attorney General or Commission
2 shall notify any association or export trading company
3 or member thereof, against which it intends to bring an
4 action for revocation, 30 days in advance, as to its
5 intent to file an action under this subsection. The dis-
6 trict court shall consider any issues presented in any
7 such action de novo and if it finds that the require-
8 ments of section 2 are not met, it shall issue an order
9 declaring the certificate invalid and any other order
10 necessary to effectuate the purposes of this Act and
11 the requirements of section 2.

12 “(2) Any action brought under this subsection
13 shall be considered an action described in section 1337
14 of title 28, United States Code. Pending any such
15 action which was brought during the period any ex-
16 emption is held in abeyance pursuant to section 2(c) of
17 this Act, the court may make such temporary restrain-
18 ing order or prohibition as shall be deemed just in the
19 premises.

20 “(3) No person other than the Attorney General
21 or Commission shall have standing to bring an action
22 against an association or export trading company or
23 their respective members for failure of the association
24 or export trading company or their respective export

1 trade, export trade activities or methods of operation to
2 meet the criteria of section 2 of this Act.

3 "SEC. 5. GUIDELINES.

4 "(a) INITIAL PROPOSED GUIDELINES.—Within 90
5 days after the enactment of the Export Trade Association
6 Act of 1980, the Secretary, after consultation with the Attor-
7 ney General and the Commission, shall publish proposed
8 guidelines for purposes of determining whether export trade,
9 export trade activities and methods of operation of an associ-
10 ation or export trading company will meet the requirements
11 of section 2 of this Act.

12 "(b) PUBLIC COMMENT PERIOD.—Following publica-
13 tion of the proposed guidelines, and any proposed revision of
14 guidelines, interested parties shall have 30 days to comment
15 on the proposed guidelines. The Secretary shall review the
16 comments and, after consultation with the Attorney General
17 and Commission, publish final guidelines within 30 days after
18 the last day on which comments may be made under the
19 preceding sentence.

20 "(c) PERIODIC REVISION.—After publication of the
21 final guidelines, the Secretary shall periodically review the
22 guidelines and, after consultation with the Attorney General,
23 and the Commission, propose revisions as needed.

24 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
25 ACT.—The promulgation of guidelines under this section

1 shall not be considered for purposes of subchapter II of chap-
2 ter 5 of title 5, United States Code, and section 553 of such
3 title shall not apply to their promulgation.

4 **"SEC. 6. ANNUAL REPORTS.**

5 "Every certified association or export trading company
6 shall submit to the Secretary an annual report, in such form
7 and at such time as he may require, which report updates
8 where necessary the information described by section 4(a) of
9 this Act.

10 **"SEC. 7. OFFICE OF EXPORT TRADE IN COMMERCE**
11 **DEPARTMENT.**

12 "The Secretary shall establish within the Department of
13 Commerce an office to promote and encourage to the great-
14 est extent feasible the formation of export trade associations
15 and export trading companies through the use of provisions of
16 this Act in a manner consistent with this Act.

17 **"SEC. 8. AUTOMATIC CERTIFICATION FOR EXISTING**
18 **ASSOCIATIONS.**

19 "The Secretary shall certify any export trade associ-
20 ation registered with the Federal Trade Commission as of
21 April 3, 1980, if such association, within 180 days after the
22 date of enactment of such Act, files with the Secretary an
23 application for certification as provided for in section 5 of this
24 Act, unless such application shows on its face that the associ-
25 ation is not eligible for certification under this Act.

1 "SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL
2 REPORT INFORMATION.

3 "(a) GENERAL RULE.—Portions of applications made
4 under section 4, including amendments to such applications,
5 and annual reports made under section 6 that contain trade
6 secrets or confidential business or financial information, the
7 disclosure of which would harm the competitive position of
8 the person submitting such information shall be confidential,
9 and, except as authorized by this section, no officer or em-
10 ployee, or former officer or employee, of the United States
11 shall disclose any such confidential information, obtained by
12 him in any manner in connection with his service as such an
13 officer or employee.

14 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
15 MISSION.—Whenever the Secretary believes that an appli-
16 cant may be eligible for a certificate, or has issued a certifi-
17 cate to an association or export trading company, he shall
18 promptly make available all materials filed by the applicant,
19 association or export trading company, including applications
20 and supplements thereto, reports of material changes, appli-
21 cations for amendments and annual reports, and information
22 derived therefrom. The Secretary shall make available appli-
23 cations, amendments thereto or annual reports, or informa-
24 tion derived therefrom, to the Attorney General or Commis-
25 sion, or any employee or officer thereof, for official use in
26 connection with an investigation or judicial or administrative

1 proceeding under this Act or the antitrust laws to which the
2 United States or the Commission is or may be a party. Such
3 information may only be disclosed by the Secretary upon a
4 prior certification that the information will be maintained in
5 confidence and will only be used for such official law enforce-
6 ment purposes.

7 **"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
8 **UNITED STATES OBLIGATIONS.**

9 "At such time as the United States undertakes binding
10 international obligations by treaty or statute, to the extent
11 that the operations of any export trade association or export
12 trading company, certified under this Act, are inconsistent
13 with such international obligations, the Secretary may re-
14 quire it to modify its operations so as to be consistent with
15 such international obligations.

16 **"SEC. 11. REGULATIONS.**

17 "The Secretary, after consultation with the Attorney
18 General and the Commission, shall promulgate such rules
19 and regulations as may be necessary to carry out the pur-
20 poses of this Act.

21 **"SEC. 12. TASK FORCE STUDY.**

22 "Seven years after the date of enactment of the Export
23 Trade Association Act of 1980, the President shall appoint,
24 by and with the advice and consent of the Senate, a task
25 force to examine the effect of the operation of this Act on

1 domestic competition and on United States international
 2 trade and to recommend either continuation, revision, or ter-
 3 mination of the Webb-Pomerene Act. The task force shall
 4 have 1 year to conduct its study and to make its recommen-
 5 dations to the President.”.

6 (2) REDESIGNATION OF SECTION 6.—The Act is
 7 amended—

8 (A) by striking out “SEC. 6.” in section 6
 9 (15 U.S.C. 66), and

10 (B) by inserting immediately before such sec-
 11 tion the following:

12 “SEC. 14. SHORT TITLE.”.

13 **PART 3—ANTITRUST PROCEDURES**
 14 **SIMPLIFICATION**

15 **SEC. 431. DEFINITIONS.**

16 For purposes of this part—

17 (1) The term “structural arrangement” means a
 18 situation or course of action that affects the pattern of
 19 ownership or control in industry.

20 (2) The term “conduct” means a practice that
 21 may affect domestic competition but does not directly
 22 affect the structure of ownership or control in industry.

23 (3) The term “disclosure” means a statement pub-
 24 lished by the Attorney General or the Assistant Attor-
 25 ney General for the antitrust division under section

1 5(a) describing conduct and structural arrangements re-
2 lating to export sales that will not be subject to crimi-
3 nal or civil prosecution under the antitrust laws.

4 (4) The term “antitrust laws” means the Sherman
5 Act, the Federal Trade Commission Act, the Clayton
6 Act, and any other Acts in pari materia.

7 **SEC. 432. STUDIES BY ATTORNEY GENERAL.**

8 (a) **IN GENERAL.**—The Attorney General, in consulta-
9 tion with the Secretary of Commerce and the heads of other
10 United States agencies with enforcement responsibility under
11 the antitrust laws, shall conduct studies to determine
12 whether—

13 (1) the conduct and structural arrangements em-
14 ployed in various countries by various types and sizes
15 of United States businesses to expand exports conflict
16 significantly with basic antitrust principles; and

17 (2) a more liberal enforcement policy for overseas
18 activities than would be appropriate for domestic trans-
19 actions would impede thorough implementation of the
20 legislative intent of the antitrust laws.

21 (b) **IDENTIFICATION OF CONDUCT AND STRUCTURAL**
22 **ARRANGEMENTS.**—On the basis of studies carried out under
23 subsection (a), or other information available to the Depart-
24 ment of Justice, the Attorney General shall identify conduct
25 and structural arrangements associated with particular types

1 of export sales which the Attorney General determines would
2 not warrant criminal or civil prosecution under the antitrust
3 laws by the Department of Justice.

4 (c) DEADLINE FOR INITIAL STUDIES.—The initial
5 studies made under subsection (a) shall be completed within 1
6 year after the date of enactment of this Act and shall be
7 updated annually.

8 SEC. 433. PROCEDURES.

9 (a) ATTORNEY GENERAL.—The Attorney General
10 shall—

11 (1) publish a description of conduct and structural
12 arrangements identified pursuant to section 432(b) as
13 not meriting criminal or civil prosecution under the
14 antitrust laws and shall make the published description
15 available to all potentially interested exporters; and

16 (2) establish procedures to assure a prompt re-
17 sponse to—

18 (A) petitions from individual exporters or
19 classes of exporters for the issuance of descrip-
20 tions under paragraph (1); and

21 (B) petitions from an individual exporter or
22 group of exporters for the issuance of a statement
23 of civil and criminal enforcement intentions con-
24 cerning specific conduct in which the petitioner
25 proposes to engage, or structural arrangements

1 the petitioner proposes to establish, in connection
2 with exports.

3 (b) SECRETARY OF COMMERCE.—The Secretary of
4 Commerce may intervene at any time to request that the
5 Attorney General publish a description under subsection
6 (a)(1) with respect to conduct or structural arrangements or
7 to reconsider a description published under such subsection.
8 Within 30 days after receiving such a request from the Sec-
9 retary, the Attorney General shall take whatever action he
10 determines to be appropriate with respect to the request and
11 inform the Secretary of the determination and action taken.
12 The action of the Attorney General shall be final and shall
13 not be subject to judicial review.

14 (c) FORMS AND PROCEDURES FOR OBTAINING DISCLO-
15 SURES.—The Attorney General shall establish appropriate
16 forms and procedures for the purpose of—

17 (1) communicating disclosures issued under sub-
18 section (a) to affected parties;

19 (2) informing exporters of specific actions they
20 must take to obtain disclosures pursuant to subsection
21 (a), or to be deemed covered by disclosures made pur-
22 suant to subsection (a)(2);

23 (3) determining actions exporters have taken in
24 reliance on such descriptions; and

1 (4) identifying problems associated with discharg-
2 ing the evaluation, disclosure, and monitoring functions
3 authorized under this Act.

4 (d) **PROVISION OF LEGAL ASSISTANCE.**—Upon re-
5 quest, the Secretary of Commerce may, on a reimbursable
6 basis, provide legal assistance to existing and potential ex-
7 porters who are unable to obtain specialized antitrust coun-
8 sel. Such assistance shall be limited to assistance in obtaining
9 enforcement intention disclosures provided for under subsec-
10 tion (a)(2).

11 (e) **APPLICABILITY OF ADMINISTRATIVE PROCEDURE**
12 **ACT RULES.**—Agency proceedings and agency actions (as
13 defined in paragraphs (12) and (13), respectively, of section
14 551 of title 5, United States Code) under this part shall not
15 be subject to subchapter II of chapter 5 of title 5, United
16 States Code (other than sections 552, 552a, and 552b).

17 **SEC. 434. COMPLIANCE BY EXPORTERS.**

18 (a) **ANTITRUST EXEMPTION.**—Notwithstanding any
19 other provision of law, an exporter shall not be subject to
20 civil or criminal prosecution under the antitrust laws by any
21 Federal agency if—

22 (1) the exporter, or group of exporters, notifies
23 the Attorney General, pursuant to procedures estab-
24 lished under section 433(c)(2), that the exporter or
25 group intends to engage in conduct or to establish

1 structural arrangements which have been designated
2 by the Attorney General as conduct or structural ar-
3 rangements not subject to civil or criminal prosecution
4 under the antitrust laws, and the Attorney General
5 does not object to the proposed conduct or arrange-
6 ment within 30 days and inform such exporter, or
7 group of exporters, of the specific reasons why the pro-
8 posed conduct and structural arrangements are not
9 covered by disclosures made pursuant to section
10 433(a); or

11 (2) the exporter requests a statement of civil and
12 criminal enforcement intentions concerning a particular
13 transaction pursuant to section 433(a)(2)(B), and within
14 60 days after the date of the request—

15 (A) receives an approval from the Attorney
16 General, or

17 (B) does not receive an objection in writing
18 from the Attorney General to the transaction set-
19 ting forth the specific reasons why the transaction
20 is in conflict with specific provisions of the anti-
21 trust laws.

22 (b) OBJECTIONS TO PROPOSED ACTIVITY.—Whenever
23 the Attorney General objects to proposed conduct or struc-
24 tural arrangements under paragraph (1) or (2) of subsection
25 (a)—

1 (1) the Attorney General shall notify the exporter
2 or group of exporters of such objections within 30 days
3 (60 days in the case of a request described in para-
4 graph (2) of such subsection) of receiving notification
5 regarding the proposed conduct or structural arrange-
6 ments and shall notify the exporter or group of export-
7 ers involved that they may request that a hearing be
8 held on the objections to the proposed conduct or
9 structural arrangement;

10 (2) the exporter or exporters involved shall notify
11 the Attorney General within 15 days after receiving
12 the objections if they wish to have a hearing;

13 (3) the Attorney General shall conduct any such
14 hearing within 30 days after the date on which the re-
15 quest for a hearing under paragraph (2) is received by
16 the Department of Justice;

17 (4) such hearing shall continue for no more than
18 30 days; and

19 (5) the Attorney General shall make the disclo-
20 sure determination within 15 days after the completion
21 of such hearing, notify the exporter or group of export-
22 ers of the determination, and publish the determination.

23 (c) FINALITY OF DETERMINATION.—A determination
24 by the Attorney General under subsection (b) shall be final
25 and shall not be subject to judicial review.

1 SEC. 435. INJUNCTIONS.

2 The Attorney General may request any United States
3 district court to issue an injunction regarding a disclosure
4 under section 433(a)(2) of this Act, when the Attorney Gen-
5 eral determines that—

6 (1) the activity of the exporter or group of export-
7 ers is acting outside of the scope of the disclosure;

8 (2) the circumstances under which the disclosure
9 was issued have substantially changed; or

10 (3) the disclosure was issued upon inaccurate or
11 fraudulent information.

12 SEC. 436. REPORTS AND DISCLOSURES.

13 On December 31 of each year, the Attorney General,
14 the Secretary of Commerce, and the heads of other United
15 States agencies directly affected by disclosures under this
16 part shall each file with the Congress, and make public, a
17 detailed report of—

18 (1) all actions by the appropriate department or
19 agency, or by other interested public and private par-
20 ties, taken pursuant to this part;

21 (2) any problems associated with the implementa-
22 tion of this part;

23 (3) the specific plans of the appropriate depart-
24 ment or agency to carry out its responsibilities (if any)
25 under this part in the next fiscal year; and

1 (4) any recommendations for amendment of this
2 part.

3 **SEC. 437. AUTHORIZATION OF APPROPRIATIONS.**

4 (a) **ATTORNEY GENERAL.**—There are authorized to be
5 appropriated to the Attorney General such sums as may be
6 necessary for the purpose of carrying out this part.

7 (b) **SECRETARY OF COMMERCE.**—There are authorized
8 to be appropriated to the Secretary of Commerce such sums
9 as may be necessary for fiscal year 1981 for the sole purpose
10 of covering costs associated with initial implementation of
11 section 433(d) of this part.

12 **SEC. 438. EFFECTIVE DATE.**

13 This part shall take effect on October 1, 1980.

14 **TITLE V—AMENDMENTS TO OTHER LAWS THAT**
15 **HINDER EXPORTS**

16 **PART 1—FINDINGS AND CONCLUSIONS**

17 **SEC. 501. FINDINGS AND CONCLUSIONS.**

18 (a) **FINDINGS.**—The Congress finds that—

19 (1) there are a number of United States laws, reg-
20 ulations, controls, and policies that have been instituted
21 to serve legitimate domestic economic, political and
22 ethical needs but which have little regard for their cost
23 in terms of an adverse impact on exports;

24 (2) the effects of some of these laws, regulations
25 and policies have been to prohibit exports, raise the

1 cost of producing goods for export, increase the uncer-
2 tainty or cost of export transactions, and lengthen the
3 time and increase the risk of negotiating and complet-
4 ing export transactions;

5 (3) it is in the national interest to avoid restraints
6 on exports except when national security or foreign
7 policy considerations clearly outweigh the total costs of
8 the impairment to trade;

9 (4) the unpredictable and unclear nature of the en-
10 forcement, interpretation and jurisdiction of many of
11 these laws and regulations has contributed to a climate
12 of debilitating uncertainty among businessmen involved
13 in exports; and

14 (5) the United States agencies responsible for en-
15 forcement or interpretation of the above laws and poli-
16 cies do not sufficiently coordinate interpretation and
17 enforcement practices among themselves, or with other
18 agencies responsible for international trade policy,
19 export promotion, foreign policy and international mon-
20 etary policy.

21 (b) CONCLUSIONS.—The Congress concludes that—

22 (1) laws and regulations promoting and constrain-
23 ing international trade should be designed to reflect dif-
24 ferences in enterprise size, trade experience, industry
25 type and product destinations in order to minimize

1 costs and maximize benefits of such laws and regula-
2 tions absorbed by the private sector;

3 (2) export impact statements should be required
4 for all policies and regulations affecting exports, to de-
5 termine as accurately as possible the extent of damage
6 to our trading interests caused by them, and to weigh
7 these costs against foreign policy considerations;

8 (3) some of the problems addressed in the laws
9 and regulations demand an international approach and
10 appropriate international agreements should be initiated
11 and sought by the United States agencies responsible
12 for trade treaties and by the President; and

13 (4) business should be allowed to obtain promptly
14 and efficiently binding statements of interpretation and
15 applications.

16 **PART 2—BUSINESS ACCOUNTING AND TRADE**

17 **SIMPLIFICATION**

18 **SEC. 521. FINDINGS AND CONCLUSIONS.**

19 (a) **FINDINGS.**—The Congress finds that—

20 (1) the enactment of the Foreign Corrupt Prac-
21 tices Act of 1977 was a positive and significant step
22 toward the important objective of prohibiting bribery of
23 foreign government officials by United States compa-
24 nies in order to obtain, retain, or direct business;

1 (2) the unpredictable and unclear nature of the en-
2 forcement, interpretation, and jurisdiction of the For-
3 eign Corrupt Practices Act of 1977 by United States
4 agencies has caused unnecessary confusion among ex-
5 isting and potential exporters as to the scope of legiti-
6 mate overseas business activities;

7 (3) the Foreign Corrupt Practices Act of 1977
8 does not reflect important differences in competitive
9 conditions among various cultures and country markets
10 for different products and services;

11 (4) the accounting standards requirements of the
12 Foreign Corrupt Practices Act of 1977, which apply to
13 all issuers of securities regardless of size, market, or
14 the presence of international transactions, are exces-
15 sive and result in costly and unnecessary paperwork
16 burdens;

17 (5) United States agencies responsible for enforce-
18 ment of the Foreign Corrupt Practices Act of 1977 do
19 not sufficiently coordinate interpretation and enforce-
20 ment practices among themselves, or with other agen-
21 cies responsible for international trade policy, export
22 promotion, foreign policy, international monetary
23 policy, and other related civil and criminal statutes;
24 and

1 (6) it is in the best interests of all countries to
2 maintain responsible standards of corporate conduct in
3 foreign markets to preserve free and equitable trading
4 practices.

5 (b) CONCLUSIONS.—The Congress concludes that—

6 (1) the principal objectives of the Foreign Corrupt
7 Practices Act of 1977 are desirable, beneficial, and im-
8 portant to our Nation as well as to our relationships
9 with our trading partners, and these objectives should
10 remain the central intent of the Act;

11 (2) exporters should not be subject to unclear,
12 conflicting, and potentially damaging demands by di-
13 verse United States agencies responsible for enforce-
14 ment of the Foreign Corrupt Practices Act of 1977;

15 (3) conduct and structural arrangements of United
16 States exporters should be permitted, if they do not
17 have a negative impact on our commerce with foreign
18 nations, restrict fair competition, or otherwise conflict
19 with the basic principles of the Foreign Corrupt Prac-
20 tices Act of 1977;

21 (4) the accounting standards requirements of the
22 Foreign Corrupt Practices Act of 1977 should be inte-
23 grated with concepts of materiality accepted by the ac-
24 counting profession, and should take into consideration
25 the size and operations of issuers of securities;

1 (5) legal interpretations and general compliance
2 and enforcement practices associated with the Foreign
3 Corrupt Practices Act of 1977 should be developed in
4 accordance with considerations underlying foreign
5 policy relations, international trade, export promotion,
6 international monetary policy, and other related civil
7 and criminal statutes; and

8 (6) a solution to the problem of corrupt payments
9 by firms to obtain or retain business demands on inter-
10 national approach, accordingly appropriate interna-
11 tional agreements should be initiated and sought by the
12 United States agencies responsible for trade agree-
13 ments and by the President.

14 **SEC. 522. AMENDMENT OF SHORT TITLE.**

15 Section 101 of the Foreign Corrupt Practices Act of
16 1977 is amended to read as follows:

17 "SHORT TITLE

18 "SEC. 101. This title may be cited as the 'Business
19 Practices and Records Act'."

20 **SEC. 523. ACCOUNTING STANDARDS.**

21 (a) **RECORDKEEPING.**—Section 13(b)(2) of the Securi-
22 ties Exchange Act of 1934 is amended by striking out
23 clauses (A) and (B) and inserting in lieu thereof the following:

24 "(A) make and keep books, accounting records,
25 and accounts which reflect the transactions of the

1 issuer (including the disposition of assets, equities, and
2 liabilities) in all material respects so as (i) to permit
3 preparation of financial statements in conformity with
4 generally accepted accounting principles or other crite-
5 ria applicable to such statements, and (ii) to maintain
6 accountability for such assets, equities, and liabilities;
7 and

8 “(B) devise and maintain a system of internal ac-
9 counting controls sufficient to provide reasonable assur-
10 ances that in all material respects and in accordance
11 with generally accepted accounting principles—

12 “(i) transactions are executed in accord-
13 ance with management’s general or specific
14 authorization;

15 “(ii) transactions are recorded as necessary
16 (I) to permit preparation of financial statements in
17 conformity with generally accepted accounting
18 principles or any other criteria applicable to such
19 statements, and (II) to maintain accountability for
20 assets;

21 “(iii) access to assets is permitted only in ac-
22 cordance with management’s general or specific
23 authorization; and

24 “(iv) the recorded accountability for assets is
25 compared with the existing assets at reasonable

1 intervals and appropriate action is taken with re-
2 spect to any differences.”.

3 (b) LIABILITY.—Section 13(b) of the Securities Ex-
4 change Act of 1934 is amended by adding at the end thereof
5 the following:

6 “(4) An issuer shall be liable in any action or proceeding
7 arising under paragraph (2) only for knowingly falsifying, or
8 causing to be falsified, any book, accounting record, or ac-
9 count described therein or for the intentionally wrongful
10 maintenance of a system of internal accounting controls
11 which is not consistent with the purposes of paragraph (2), or
12 any intentionally wrongful attempt to circumvent the internal
13 accounting controls established pursuant to such paragraph.

14 “(5) Where an issuer holds 50 per centum or less of the
15 equity capital of a domestic or foreign firm, the provisions of
16 paragraph (2) require only that the issuer proceed in good
17 faith to use its influence, to the extent reasonable under the
18 issuer’s circumstances, including the relative degree of its
19 ownership or control over the domestic or foreign firm and
20 under the laws and practices governing the business oper-
21 ations of the country in which such firm is located, to cause
22 transactions and dispositions of assets having a material
23 effect on the issuer’s interest in the foreign controlled firm to
24 be carried out consistent with the purposes of such para-
25 graph. Such an issuer shall be presumed conclusively to have

1 complied with the provisions of paragraph (2) by demonstrat-
2 ing good faith efforts to use such influence.”.

3 **SEC. 524. REPEAL OF SECTION 30A.**

4 (a) **IN GENERAL.**—Section 30A of the Securities Ex-
5 change Act of 1934 is repealed.

6 (b) **CONFORMING AMENDMENTS.**—

7 (1) Section 104 of the Business Practices and
8 Records Act is amended by inserting “or any issuer”
9 after “any domestic concern” whenever it appears
10 except in section 104(b)(1)(B).

11 (2) Section 104(a) of such Act is amended by
12 striking out “, other than an issuer which is subject to
13 section 30A of the Securities Exchange Act of 1934”.

14 (3) Section 104(b)(1)(B) of such Act is amended
15 by inserting “or any issuer which willfully violates sub-
16 section (a)” before “shall, upon conviction”.

17 **SEC. 525. DEFINITIONS.**

18 (a) **SECURITIES EXCHANGE ACT AMENDMENT.**—Sec-
19 tion 13(b) of the Securities Exchange Act of 1934 is amended
20 by adding at the end thereof the following:

21 “(6) For the purpose of this section, the term
22 ‘reasonable assurances’ means justifiable measures, in
23 light of the benefits to be derived from any costs in-
24 curred and appropriate in view of the objective sought

1 to be achieved, taken to ensure that the purposes of
2 paragraph (2) will be accomplished.

3 “(7) For the purpose of this section, the term ‘in
4 all material respects’ means materiality as measured in
5 the preparation and presentation of financial statements
6 of the issuer.”.

7 (b) BUSINESS PRACTICES AND RECORDS ACT AMEND-
8 MENT.—The Business Practices and Records Act is amended
9 by inserting after section 104(d)(3) the following:

10 “(4) The term ‘issuer’ means any issuer which
11 has a class of securities registered pursuant to section
12 12 of the Securities Exchange Act of 1934 or which is
13 required to file reports under section 15(d) of the Secu-
14 rities Exchange Act of 1934.

15 “(e) For the purpose of this Act, an offer, payment,
16 promise to pay, or authorization of the payment of any
17 money, or offer, gift, promise to give, or authorization of the
18 giving of anything of value shall not include an item of value
19 that constitutes, or is intended as no more than, an item
20 given as a courtesy, a token of regard and esteem, or in
21 return for hospitality, and is not meant to include marketing
22 education, or expenses related to the demonstration or expla-
23 nation of products, or operations of an issuer or a domestic
24 concern, including travel and lodging, if such marketing ac-
25 tivities, demonstrations, or explanations, or related expenses

1 pertain to the business presentation associated with the sell-
2 ing of goods and services.

3 “(f) Nothing in this Act shall prohibit any offer, pay-
4 ment, promise to pay, or authorization of the payment of any
5 money, or offer, gift, promise to give, or authorization of the
6 giving of anything of value which is lawful under the laws
7 and regulations of the country, in which the foreign official,
8 who is the intended recipient serves or in which the foreign
9 political party or official thereof or foreign political candidate
10 who is the intended recipient principally operates.”.

11 **SEC. 526. AUTHORITY TO ISSUE GUIDELINES.**

12 Title I of the Business Practices and Records Act is
13 amended by adding at the end thereof the following:

14 “GUIDELINES AND GENERAL PROCEDURES FOR
15 COMPLIANCE

16 “SEC. 105. (a) Not later than 6 months after the date of
17 enactment of this section, the Attorney General, after consul-
18 tation with other Federal agencies and representatives of the
19 business community, shall issue—

20 “(1) guidelines describing specific types of conduct
21 and structural arrangements associated with common
22 types of export sales arrangements and business con-
23 tracts which the Attorney General determines consti-
24 tute compliance with the provisions of section 104 of
25 this Act; and

1 “(2) general precautionary procedures which issu-
2 ers or domestic concerns may use on a voluntary basis
3 to ensure compliance with this Act, and to create a re-
4 buttable presumption of compliance with this Act.

5 The guidelines and procedures referred to in the preceding
6 sentence shall be issued in accordance with sections 551
7 through 557 of title 5, United States Code.

8 “(b) The Attorney General, after consultation with
9 other Federal agencies and representatives from the business
10 community, shall establish a Business Practices and Records
11 Act Review Procedure for the purpose of providing responses
12 to specific inquiries concerning enforcement intentions under
13 this Act. The Attorney General shall issue opinions, within
14 30 days, in response to requests from issuers and domestic
15 concerns, regarding compliance with the requirements of the
16 provisions of section 104 of this Act. An opinion that certain
17 conduct does not involve a violation shall be final and binding
18 on all parties, subject to the discovery of new evidence.
19 When appropriate, and at reasonable intervals, the responses
20 derived from the review procedure will be reviewed by the
21 Attorney General to determine whether such compilation of
22 responses should be included in a new guideline pursuant to
23 subsection (a).

24 “(c) Any document or other material provided to, re-
25 ceived by, or prepared in the Department of Justice, or any

1 other department or agency of the United States Govern-
2 ment, in connection with a request by an issuer or domestic
3 concern for a statement of present enforcement intentions
4 under the Business Practices and Records Review Procedure
5 Act shall be exempt from disclosure under section 552 of title
6 5, United States Code, regardless of whether the Department
7 responds to such a request or the applicant withdraws such
8 request prior to receiving a response. If any request is with-
9 drawn or does not receive a response from the Justice De-
10 partment, any document or other material submitted in con-
11 nection with such request shall be returned to the requesting
12 party, and any other document or other material submitted
13 to, received by, or prepared by the Attorney General in con-
14 sideration of such request shall either be returned if the docu-
15 ment or material originated from a source outside the United
16 States Government or shall be destroyed. Within 60 days
17 after the withdrawal of a request or the communication of the
18 decision not to respond to the request, the Department of
19 Justice shall certify to the requesting party that any such
20 document or material has been returned to the requesting
21 party or the originating non-governmental party or has been
22 destroyed in accordance with this section. The Attorney
23 General shall protect the privacy of each applicant, and all
24 documents supplied are for use by the Justice Department
25 and the Securities Exchange Commission only. The Review

1 Procedure shall be developed and instituted in accordance
2 with sections 551 through 557 and 701 through 706 of title
3 5, United States Code.

4 “(d) The Attorney General shall make a special effort to
5 provide timely compliance guidance to potential exporters,
6 and smaller businesses, who as a practical matter are unable
7 to obtain specialized counsel on issues pertaining to this Act.
8 Such assistance shall be limited to requests for enforcement
9 intention disclosures provided for under this Act, and expla-
10 nations of accounting standards requirements, and payments
11 and practices requirements.

12 “(e)(1) On September 1 of each year the Attorney Gen-
13 eral shall transmit to the Congress and make public a de-
14 tailed report on all actions which it and other interested
15 public and private parties have taken pursuant to this Act,
16 along with its views on problems associated with implemen-
17 tation, its plans for the next fiscal year to further implement
18 the Act, and recommendations for amendment.

19 “(2) On September 1 of each year the Securities and
20 Exchange Commission shall file with the Congress a detailed
21 report on all actions which it has taken pursuant to section
22 13(b) of the Securities Exchange Act, its views on problems
23 associated with implementation, its plans for the next fiscal
24 year to further implement such section, and its recommenda-
25 tions for amendment.”.

1 SEC. 527. CONFORMING CHANGE IN INTERNAL REVENUE
2 CODE.

3 Paragraph (1) of section 162(c) of the Internal Revenue
4 Code of 1954 is amended by striking out "the laws of the
5 United States if such laws were applicable to such payment
6 and to such official or employee" and inserting in lieu thereof
7 "the Business Practices and Records Act".

8 SEC. 528. INTERNATIONAL AGREEMENTS.

9 (a) NEGOTIATIONS.—It is the sense of the Congress
10 that the President should pursue the negotiation of bilateral
11 and multilateral agreements among the largest possible
12 number of nations which would establish standards of con-
13 duct for international business practices and which would
14 create a process by which problems and conflicts associated
15 with such practices could be resolved, and to explore through
16 negotiations an international agreement for rates of
17 commissions.

18 (b) REPORT.—It is the sense of the Congress that on
19 September 1, 1981, the President shall report to Congress on
20 the progress of these negotiations, and those steps which the
21 Administration and Congress should consider taking in the
22 event that the negotiations referred to in subsection (a) do not
23 successfully eliminate the competitive disadvantage of United
24 States business. Within 60 days of receipt of the President's
25 report, Congress shall begin a full oversight review of the
26 Business Practices and Records Act, including its effective-

ness in fulfilling its goals and purposes, effects upon export promotion, United States competitiveness, foreign policy relations, small business considerations, costs of compliance, and appropriateness of penalties and those steps set out in the report to Congress as provided in the preceding sentence.

PART 3—EXPORT COMPETITIVENESS STATEMENTS;

PAPERWORK

SEC. 531. EXPORT COMPETITIVENESS STATEMENTS.

(a) **IN GENERAL.**—Whenever an issuing authority takes a significant action which, in the judgment of the issuing authority, could affect adversely exports of United States goods and services, or the international competitive position of the United States and its exporters, he shall include in any document embodying or giving effect to such action an export competitiveness impact statement.

(b) **DEFINITIONS.**—For purposes of this section—

(1) **SIGNIFICANT ACTION.**—The term “significant action” includes, but is not limited to—

(A) rulemaking (as defined in paragraph (5) of section 551 of title 5, United States Code,

(B) promulgating regulations,

(C) developing and implementing programs,
and

(D) proclamations and orders issued by the President.

1 (2) EXPORT COMPETITIVENESS IMPACT STATE-
2 MENT.—The term “export competitiveness statement”
3 means a written statement which includes, but is not
4 limited to, an analysis of—

5 (A) whether the significant action is a unilat-
6 eral action on the part of the United States or
7 part of a multilateral action by several countries,

8 (B) the estimated value of United States ex-
9 ports which will be affected by the action,

10 (C) the industries which will be affected by
11 the action,

12 (D) any efforts made by the issuing authority
13 to solicit the views of affected industries and of
14 the views of such industries,

15 (E) alternative plans of action and the rea-
16 sons for not choosing any such alternative plan,
17 and

18 (F) whether the effect, directly or indirectly,
19 of the action will be to give to foreign competi-
20 tors, including domestic affiliates of foreign com-
21 petitors, an advantage or right which would not
22 be enjoyed absent such action.

23 (3) ISSUING AUTHORITY.—The term “issuing au-
24 thority” means the President and the head of any de-

1 partment or agency of the executive branch of the
2 United States Government.

3 (c) NO RIGHT OF ACTION CREATED.—This section
4 does not confer any right of action on any person to stay the
5 development, preparation, issuance, or implementation of any
6 significant action.

7 SEC. 532. REDUCTION OF EXPORT PAPERWORK.

8 (a) FINDINGS.—The Congress finds that an average
9 export shipment requires as many as 46 different documents
10 and 360 copies and may cost as much as \$375 for documen-
11 tation alone. Such voluminous paperwork requirements may
12 act as a deterrent to exports.

13 (b) PAPERWORK TO BE REDUCED.—It is the sense of
14 Congress that export paperwork must be reduced to encour-
15 age export sales. All agencies shall minimize the burden of
16 paperwork and reporting requirements to the greatest extent
17 feasible, with particular reference to small businesses and
18 new-to-market exporters, and reporting requirements shall be
19 designed with reference to the most recent information proc-
20 essing technology.

21 TITLE VI—EXPORT AWARENESS AND EXPORT
22 PROMOTION PROGRAMS

23 PART 1—FINDINGS; CONCLUSIONS

24 SEC. 601. STATEMENT OF FINDINGS AND CONCLUSIONS.

25 (a) FINDINGS.—The Congress finds that—

1 (1) development of a greater awareness of the
2 benefits of exports and programs for the promotion of
3 exports are critical elements in the improvement of our
4 export performance;

5 (2) there is a widespread lack of understanding of
6 the importance of trade and exports to the financial
7 and economic vitality of the United States;

8 (3) many United States firms are unaware or un-
9 interested in export sales opportunities, or lack the
10 marketing experience to successfully penetrate foreign
11 markets;

12 (4) the Federal Government is unable to carry the
13 whole burden of achieving expansion of exports;

14 (5) substantial long-term support from business,
15 labor, educational institutions, State and local govern-
16 ments, port authorities, banks, media, and other sectors
17 of the general public is required to develop and main-
18 tain effective education and trade promotion programs;

19 (6) services, including returns on overseas invest-
20 ments, are an increasingly important factor in the
21 United States trade balance; but the rate of growth of
22 service exports is below that of several of our industri-
23 alized competitors;

24 (7) only 10 percent of the United States firms ca-
25 pable of exporting are doing so, while over 90 percent

1 of exports are accounted for by relatively few
2 companies;

3 (8) total and per capita export promotion assist-
4 ance extended by the United States Government to ex-
5 porters is significantly below the average extended by
6 the governments of foreign industrialized nations;

7 (9) export trade intermediaries, such as trading
8 companies, can achieve economies of scale and acquire
9 expertise enabling them to export goods and services
10 profitably, at low per unit cost to producers;

11 (10) the United States lacks well-developed export
12 trade intermediaries to package export trade services
13 at reasonable prices (exporting services are fragmented
14 into a multitude of separate functions; companies at-
15 tempting to offer comprehensive export trade services
16 lack financial leverage to reach a significant portion of
17 potential United States exporters);

18 (11) the development of export trading companies
19 in the United States has been hampered by insular
20 business attitudes and by Government regulations; and

21 (12) if United States export trading companies are
22 to be successful in promoting United States exports
23 and in competing with foreign trading companies, they
24 must be able to draw on the resources, expertise, and

1 knowledge of the United States banking system, both
2 in the United States and abroad.

3 (b) CONCLUSIONS.—Congress concludes that—

4 (1) the emphasis on export promotion programs
5 should be on encouraging public-private sector
6 cooperation;

7 (2) because of its national and international scope,
8 the Federal Government can and should play a key
9 role in guiding other sectors to achieve common export
10 goals through continuation and establishment of broad-
11 based programs to educate the public on exporting and
12 to assist United States exporters to introduce and pro-
13 mote their products and services overseas;

14 (3) increased efforts must be made by the Federal
15 Government to enlist the assistance of private sector
16 organizations in assisting United States exporters, and
17 funding and other incentives must be made available in
18 such reasonable, effective, and efficient amounts to sus-
19 tain such activities;

20 (4) private organizations familiar with exporters,
21 such as chambers of commerce, American chambers of
22 commerce abroad, trade associations, and financial in-
23 stitutions should bear a larger share of the burden of
24 educating the public on the importance of export ex-
25 pansion and insuring that public concerns are well un-

1 derstood by United States Government officials admin-
2 istering export-related programs;

3 (5) all trade-related government agencies should
4 consult with appropriate segments of the private sector
5 on all economic policies and improve the liaison be-
6 tween government agencies and American business or-
7 ganizations and individual exporters;

8 (6) United States Government marketing assist-
9 ance programs should emphasize servicing individual
10 firms in preference to the use of resources for general-
11 ized information and assistance;

12 (7) service exports must be provided assistance
13 equivalent to the export of manufacturers, with new
14 assistance programs developed where service export-
15 ers' needs differ and can be properly identified;

16 (8) service exports should be encouraged by the
17 United States Government, and export policy should be
18 based on the principle of reciprocal export opportuni-
19 ties and treatment;

20 (9) support for export education programs should
21 be increased through Federal and non-Federal pro-
22 grams that are supplemented by related programs de-
23 signed to facilitate exporting, such as foreign language
24 training and translation and international financing;

1 (10) special assistance should be provided to new-
2 to-export firms, particularly smaller or medium-sized
3 firms that may lack the resources to export on an indi-
4 vidual basis;

5 (11) financial assistance, through special loan and
6 guaranty programs, should be made available to ex-
7 porters; and

8 (12) financial support for export promotion pro-
9 grams should be given a higher budgetary and policy
10 priority to make financial assistance and incentive pro-
11 grams equivalent to those of our foreign industrial
12 competitors.

13 **PART 2—EXPORT TRADING COMPANIES**

14 **SEC. 621. SHORT TITLE.**

15 This part may be cited as the “Export Trading Compa-
16 ny Act of 1980”.

17 **SEC. 622. PURPOSE.**

18 The purpose of this part is to increase United States
19 exports of products and services by encouraging more effi-
20 cient provision of export trade services to American pro-
21 ducers and suppliers.

22 **SEC. 623. DEFINITIONS.**

23 (a) **IN GENERAL.**—As used in this part—

24 (1) **EXPORT TRADE.**—The term “export trade”
25 means trade or commerce in goods sourced in the

1 United States or services produced in the United
2 States exported, or in the course of being exported,
3 from the United States to any foreign nation.

4 (2) GOODS PRODUCED IN THE UNITED
5 STATES.—The term “goods produced in the United
6 States” means tangible property manufactured, pro-
7 duced, grown, or extracted in the United States, the
8 cost of the imported raw materials and components
9 thereof shall not exceed 50 percent of the sales price.

10 (3) SERVICES PRODUCED IN THE UNITED
11 STATES.—The term “services produced in the United
12 States” includes, but is not limited to accounting,
13 amusement, architectural, automatic data processing,
14 business, communications, construction franchising and
15 licensing, consulting, engineering, financial, insurance,
16 legal, management, repair, tourism, training, and
17 transportation services, not less than 50 percent of the
18 sales or billings of which is provided by United States
19 citizens or is otherwise attributable to the United
20 States.

21 (4) EXPORT TRADE SERVICES.—The term
22 “export trade services” includes, but is not limited to,
23 consulting, international market research, advertising,
24 marketing, insurance, product research and design,
25 legal assistance, transportation, including trade docu-

1 mentation and freight forwarding, communication and
2 processing of foreign orders to and for exporters and
3 foreign purchasers, warehousing, foreign exchange, and
4 financing when provided in order to facilitate the
5 export of goods or services produced in the United
6 States.

7 (5) EXPORT TRADING COMPANY.—The term
8 “export trading company” means a company which
9 does business under the laws of the United States or
10 any State and which is organized and operated princi-
11 pally for the purposes of—

12 (A) exporting goods or services produced in
13 the United States; and

14 (B) facilitating the exportation of goods and
15 services produced in the United States by unaffil-
16 iated persons by providing one or more export
17 trade services.

18 (6) UNITED STATES.—The term “United States”
19 means the several States of the United States, the Dis-
20 trict of Columbia, the Commonwealth of Puerto Rico,
21 the Virgin Islands, American Samoa, Guam, the Com-
22 monwealth of the Northern Mariana Islands, and the
23 Trust Territory of the Pacific Islands.

24 (7) SECRETARY.—The term “Secretary” means
25 the Secretary of Commerce.

1 (8) COMPANY.—The term “company” means
2 any corporation, partnership, association, or similar
3 organization.

4 (b) FURTHER DEFINITION.—The Secretary is author-
5 ized, by regulation, to further define such terms consistent
6 with this section.

7 **SEC. 624. FUNCTIONS OF THE SECRETARY OF COMMERCE.**

8 The Secretary shall promote and encourage the forma-
9 tion and operation of export trading companies by providing
10 information and advice to interested persons and by facilitat-
11 ing contact between producers of exportable goods and serv-
12 ices and firms offering export trade services.

13 **SEC. 625. OWNERSHIP OF EXPORT TRADING COMPANIES BY**
14 **BANKS, BANK HOLDING COMPANIES, AND IN-**
15 **TERNATIONAL BANKING CORPORATIONS.**

16 (a) DEFINITIONS.—For the purpose of this section—

17 (1) BANKING ORGANIZATION.—The term “bank-
18 ing organization” means any State bank, national
19 bank, Federal savings bank, bankers’ bank, bank hold-
20 ing company, Edge Act Corporation, or Agreement
21 Corporation.

22 (2) STATE BANK.—The term “State bank” means
23 any bank which is incorporated under the laws of any
24 State, any territory of the United States, the Common-
25 wealth of Puerto Rico, Guam, American Samoa, the

1 Commonwealth of the Northern Mariana Islands, or
2 the Virgin Islands, or any bank (except a national
3 bank) which is operating under the Code of Law for
4 the District of Columbia (hereinafter referred to as a
5 “District bank”).

6 (3) STATE MEMBER BANK.—The term “State
7 member bank” means any State bank, including a
8 bankers’ bank, which is a member of the Federal Re-
9 serve System.

10 (4) STATE NONMEMBER INSURED BANK.—The
11 term “State nonmember insured bank” means any
12 State bank, including a bankers’ bank, which is not a
13 member of the Federal Reserve System, but the depos-
14 its of which are insured by the Federal Deposit Insur-
15 ance Corporation.

16 (5) BANKERS’ BANK.—The term “bankers’ bank”
17 means any bank which (A) is organized solely to do
18 business with other financial institutions, (B) is owned
19 primarily by the financial institutions with which it
20 does business, and (C) does not do business with the
21 general public.

22 (6) BANK HOLDING COMPANY.—The term “bank
23 holding company” has the same meaning as in the
24 Bank Holding Company Act of 1956.

1 (7) EDGE ACT CORPORATION.—The term “Edge
2 Act Corporation” means a corporation organized under
3 section 25(a) of the Federal Reserve Act.

4 (8) AGREEMENT CORPORATION.—The term
5 “Agreement Corporation” means a corporation operat-
6 ing subject to section 25 of the Federal Reserve Act.

7 (9) APPROPRIATE FEDERAL BANKING
8 AGENCY.—The term “appropriate Federal banking
9 agency” means—

10 (A) the Comptroller of the Currency with re-
11 spect to a national bank or any District bank;

12 (B) the Board of Governors of the Federal
13 Reserve System with respect to a State member
14 bank, bank holding company, Edge Act Corpora-
15 tion, or Agreement Corporation;

16 (C) the Federal Deposit Insurance Corpora-
17 tion with respect to a State nonmember insured
18 bank except a District bank; and

19 (D) the Federal Home Loan Bank Board
20 with respect to a Federal savings bank.

21 In any situation where the banking organization hold-
22 ing or making an investment in an export trading com-
23 pany is a subsidiary of another banking organization
24 which is subject to the jurisdiction of another agency,
25 and some form of agency approval or notification is re-

quired, such approval or notification need only be obtained from or made to, as the case may be, the appropriate Federal banking agency for the banking organization making or holding the investment in the export trading company.

(10) CAPITAL AND SURPLUS.—The term “capital and surplus” means paid in and unimpaired capital and surplus, and includes undivided profits and such other items as the appropriate Federal banking agency may deem appropriate.

(11) AFFILIATE.—An “affiliate” of a banking organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company.

(12) CONTROL; SUBSIDIARY.—The terms “control” and “subsidiary” shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms “controlled” and “controlling” shall be construed consistently with the term “control” as defined in section 2 of the Bank Holding Company Act of 1956.

(13) EXPORT TRADING COMPANY.—The term “export trading company” has the same meaning as in section 623(a)(5) of this Act, or means any company

1 organized and operating principally for the purpose of
2 providing export trade services, as defined in section
3 623(a)(4) of this Act.

4 (b) EXPORT TRADING COMPANY INVESTMENTS BY
5 BANKING ORGANIZATIONS.—

6 (1) INVESTMENT PERMITTED.—Notwithstanding
7 any prohibition, restriction, limitation, condition, or re-
8 quirement of any other law, a banking organization,
9 subject to the limitations of subsection (c) and the pro-
10 cedures of this subsection, may invest directly and indi-
11 rectly in the aggregate, up to 5 percent of its consoli-
12 dated capital and surplus (25 percent in the case of an
13 Edge Act Corporation or Agreement Corporation not
14 engaged in banking) in the voting stock or other evi-
15 dences of ownership of one or more export trading
16 companies. A banking organization may—

17 (A) invest up to an aggregate amount of
18 \$10,000,000 in one or more export trading com-
19 panies without the prior approval of the appropri-
20 ate Federal banking agency, if such investment
21 does not cause an export trading company to
22 become a subsidiary of the investing banking or-
23 ganization; and

24 (B) make investments in excess of an aggre-
25 gate amount of \$10,000,000 in one or more

1 export trading companies, or make any invest-
2 ment or take any other action which causes an
3 export trading company to become a subsidiary of
4 the investing banking organization or which will
5 cause more than 50 percent of the voting stock of
6 an export trading company to be owned or con-
7 trolled by banking organizations, only with the
8 prior approval of the appropriate Federal banking
9 agency.

10 Any banking organization which makes an investment
11 under authority of clause (A) of the preceding sentence
12 shall promptly notify the appropriate Federal banking
13 agency of such investment and shall file such reports
14 on such investment as such agency may require. If,
15 after receipt of any such notification, the appropriate
16 Federal banking agency determines, after notice and
17 opportunity for hearing, that the export trading com-
18 pany is a subsidiary of the investing banking organiza-
19 tion, it shall have authority to disapprove the invest-
20 ment or impose conditions on such investment under
21 authority of subsection (d). In furtherance of such au-
22 thority, the appropriate Federal banking agency may
23 require divestiture of any voting stock or other evi-
24 dences of ownership previously acquired, and may

1 impose conditions necessary for the termination of any
2 controlling relationship.

3 (2) NOTICE REQUIREMENT.—If a banking organi-
4 zation proposes to make any investment or engage in
5 any activity included within the following two subpara-
6 graphs, it must give the appropriate Federal banking
7 agency 60 days prior written notice before it makes
8 such investment or engages in such activity:

9 (A) any additional investment in an export
10 trading company subsidiary; or

11 (B) the engagement by any export trading
12 company subsidiary in any line of activity, includ-
13 ing specifically the taking of title to goods, wares,
14 merchandise or commodities, if such activity was
15 not disclosed in any prior application for approval.

16 During the notification period provided under this para-
17 graph, the appropriate Federal banking agency may,
18 by written notice, disapprove the proposed investment
19 or activity or impose conditions on such investment or
20 activity under authority of subsection (d). An additional
21 investment or activity covered by this paragraph may
22 be made or engaged in, as the case may be, prior to
23 the expiration of the notification period if the appropri-
24 ate Federal banking agency issues written notice of its
25 intent not to disapprove.

(3) FAILURE TO DISAPPROVE.—In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within the 90-day period which begins on the date the application has been accepted for processing by the appropriate Federal banking agency, the application shall be deemed to have been granted. In the event of the failure of the appropriate Federal banking agency either to disapprove or to impose conditions on any investment or activity subject to the prior notification requirements of paragraph (2) of this subsection within the 60-day period provided therein, such period beginning on the date the notification has been received by the appropriate Federal banking agency, such investment or activity may be made or engaged in, as the case may be, any time after the expiration of such period.

(c) LIMITATIONS.—The following limitations apply to export trading companies and the investments in such companies by banking organizations:

(1) NAME.—The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership.

1 (2) **MAXIMUM COST.**—The total historical cost of
2 the direct and indirect investments by a banking orga-
3 nization in an export trading company combined with
4 extensions of credit by the banking organization and its
5 direct and indirect subsidiaries to such export trading
6 company shall not exceed 10 percent of the banking
7 organization's capital and surplus.

8 (3) **DIVESTITURE FOR UNNECESSARY COMMOD-**
9 **ITIES INVESTMENTS.**—A banking organization that
10 owns any voting stock or other evidences of ownership
11 of an export trading company shall terminate its own-
12 ership of such stock if the export trading company
13 takes positions in commodities or commodities con-
14 tracts other than as may be necessary in the course of
15 its business operations.

16 (4) **EXTENSIONS OF CREDIT.**—No banking orga-
17 nization holding voting stock or other evidences of
18 ownership of any export trading company may extend
19 credit or cause any affiliate to extend credit to any
20 export trading company or to customers of such com-
21 pany on terms more favorable than those afforded simi-
22 lar borrowers in similar circumstances, and such exten-
23 sion of credit shall not involve more than the normal
24 risk of repayment or present other unfavorable
25 features.

1 (d) APPLICATIONS.—

2 (1) GENERAL FACTORS.—In the case of every
3 application under subsection (b)(1)(B) of this section,
4 the appropriate Federal banking agency shall take into
5 consideration the financial and managerial resources,
6 competitive situation, and future prospects of the bank-
7 ing organization and export trading company con-
8 cerned, and the benefits of the proposal to United
9 States business, industrial and agricultural concerns,
10 and to improving United States competitiveness in
11 world markets. The appropriate Federal banking
12 agency may not approve any investment for which an
13 application has been filed under subsection (b)(1)(B) if
14 it finds that the export benefits of such proposal are
15 outweighed in the public interest by any adverse finan-
16 cial, managerial, competitive, or other banking factors
17 associated with the particular investment. Any disap-
18 proval order issued under this section must contain a
19 statement of the reasons for disapproval.

20 (2) CONDITIONS.—In approving any application
21 submitted under subsection (b)(1)(B), the appropriate
22 Federal banking agency may impose such conditions
23 which, under the circumstances of such case, it may
24 deem necessary (A) to limit a banking organization's fi-
25 nancial exposure to an export trading company, or (B)

1 to prevent possible conflicts of interest or unsafe or un-
2 sound banking practices. With respect to the taking of
3 title to goods, wares, merchandise or commodities by
4 any export trading company subsidiary of a banking or-
5 ganization, the appropriate Federal banking agencies
6 shall establish standards designed to ensure against
7 any unsafe or unsound practices that could adversely
8 affect a controlling banking organization investor, in-
9 cluding specifically practices pertaining to an export
10 trading company subsidiary's holding of title to inven-
11 tory. Such standards should be established no later
12 than 270 days after enactment of this Act, and oppor-
13 tunity should be provided for public comment and par-
14 ticipation in developing such standards. If an export
15 trading company subsidiary of a banking organization
16 proposes to take title to goods, wares, merchandise, or
17 commodities in a manner which does not conform to
18 such standards, or prior to the establishment of such
19 standards, it may only do so with the prior approval of
20 the appropriate Federal banking agency and subject to
21 such conditions and limitations as it may impose under
22 this paragraph.

23 (3) CRITERIA FOR CONDITIONS.—In determining
24 whether to impose any condition under the preceding
25 paragraph (2), or in imposing such condition, the ap-

1 appropriate Federal banking agency must give due con-
2 sideration to the size of the banking organization and
3 export trading company involved, the degree of invest-
4 ment and other support to be provided by the banking
5 organization to the export trading company, and the
6 identity, character, and financial strength of any other
7 investors in the export trading company. The appropri-
8 ate Federal banking agency shall not impose any con-
9 ditions or set standards for the taking of title which
10 unnecessarily disadvantage, restrict or limit export
11 trading companies in competing in world markets or in
12 achieving the purpose set forth in section 622(b) of this
13 Act. In particular, in setting standards for the taking
14 of title under paragraph (2), the appropriate Federal
15 banking agencies shall give special weight to the need
16 to take title in certain kinds of trade transactions, such
17 as international barter transactions.

18 (4) DIVESTITURE ORDERED BY BOARD.—Not-
19 withstanding any other provision of this part, the ap-
20 propriate Federal banking agency may, whenever it
21 has reasonable cause to believe that the ownership or
22 control of any investment in an export trading compa-
23 ny constitutes a serious risk to the financial safety,
24 soundness, or stability of the banking organization and
25 is inconsistent with sound banking principles or with

1 the purposes of this part or with the Financial Institu-
2 tions Supervisory Act of 1966, order the banking orga-
3 nization, after due notice and opportunity for hearing,
4 to terminate (within 120 days or such longer period as
5 the Board may direct in unusual circumstances) its in-
6 vestment in the export trading company.

7 (5) REPORT.—On or before 2 years after enact-
8 ment of this Act, the appropriate Federal banking
9 agencies shall jointly report to the Committee on
10 Banking, Housing, and Urban Affairs of the Senate
11 and the Committee on Banking, Finance and Urban
12 Affairs of the House of Representatives their recom-
13 mendations with respect to the implementation of this
14 section, their recommendations on any changes in
15 United States law to facilitate the financing of United
16 States exports, especially by smaller and medium-sized
17 business concerns, and their recommendations on the
18 effects of ownership of United States banks by foreign
19 banking organizations affiliated with trading companies
20 doing business in the United States.

21 (e) JUDICIAL REVIEW.—Any party aggrieved by an
22 order of an appropriate Federal banking agency under this
23 section may obtain a review of such order in the United
24 States Court of Appeals within any circuit wherein such or-
25 ganization has its principal place of business, or in the Court

1 of Appeals for the District of Columbia Circuit, by filing a
2 notice of appeal in such court within 30 days from the date of
3 such order, and simultaneously sending a copy of such notice
4 by registered or certified mail to the appropriate Federal
5 banking agency. The appropriate Federal banking agency
6 shall promptly certify and file in such court the record upon
7 which the order was based. The court shall set aside any
8 order found to be—

9 (1) arbitrary, capricious, an abuse of discretion, or
10 otherwise not in accordance with law;

11 (2) contrary to constitutional right, power, privi-
12 lege, or immunity;

13 (3) in excess of statutory jurisdiction, authority, or
14 limitations, or short of statutory right; or

15 (4) without observance of procedure required by
16 law.

17 Except for violations of subsection (b)(3) of this section, the
18 court shall remand for further consideration by the appropri-
19 ate Federal banking agency any order set aside solely for
20 procedural errors and may remand for further consideration
21 by the appropriate Federal banking agency any order set
22 aside for substantive errors. Upon remand, the appropriate
23 Federal banking agency shall have no more than 60 days
24 from date of issuance of the court's order to cure any proce-
25 dural error or reconsider its prior order. If the agency fails to

1 act within this period, the application or other matter subject
2 to review shall be deemed to have been granted as a matter
3 of law.

4 (f) ADMINISTRATIVE AUTHORITY.—

5 (1) IN GENERAL.—The appropriate Federal bank-
6 ing agencies are authorized and empowered to issue
7 such rules, regulations, and orders, to require such re-
8 ports, to delegate such functions, and to conduct such
9 examinations of subsidiary export trading companies,
10 as each of them may deem necessary in order to per-
11 form their respective duties and functions under this
12 section and to administer and carry out the provisions
13 and purposes of this section and prevent evasions
14 thereof.

15 (2) ENFORCEMENT UNDER FEDERAL DEPOSIT IN-
16 SURANCE ACT.—In addition to any powers, remedies,
17 or sanctions otherwise provided by law, compliance
18 with the requirements imposed under this section may
19 be enforced under section 8 of the Federal Deposit In-
20 surance Act by any appropriate Federal banking
21 agency defined in that Act.

22 SEC. 626. INITIAL INVESTMENTS AND OPERATING EXPENSES.

23 (a) ECONOMIC DEVELOPMENT ADMINISTRATION AP-
24 PPLICATIONS.—The Economic Development Administration
25 and the Small Business Administration are directed, in their

1 consideration of applications by export trading companies for
2 loans and guarantees, including applications to make new in-
3 vestments related to the export of goods or services produced
4 in the United States and to meet operating expenses, to give
5 special weight to export-related benefits, including opening
6 new markets for United States goods and services abroad and
7 encouraging the involvement of small or medium-size busi-
8 nesses or agricultural concerns in the export market.

9 (b) **AUTHORIZATION OF APPROPRIATIONS.**—There are
10 authorized to be appropriated as necessary to meet the pur-
11 poses of this section, \$20,000,000 for each of the fiscal
12 years, 1981, 1982, 1983, 1984, and 1985. Amounts appro-
13 priated pursuant to the authority of this subsection shall be in
14 addition to amounts appropriated under the authority of other
15 Acts.

16 **SEC. 627. GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE**
17 **AND INVENTORY.**

18 The Export-Import Bank of the United States is author-
19 ized and directed to establish a program to provide guaran-
20 tees for loans extended by financial institutions or other pri-
21 vate creditors to export trading companies as defined in sec-
22 tion 623(a)(5) of this Act, or to other exporters, when such
23 loans are secured by export accounts receivable or inven-
24 tories of exportable goods, and when in the judgment of the
25 Board of Directors—

1 (1) the private credit market is not providing ade-
2 quate financing to enable otherwise creditworthy
3 export trading companies or exporters to consummate
4 export transactions; and

5 (2) such guarantees would facilitate expansion of
6 exports which would not otherwise occur.

7 Guarantees provided under the authority of this section shall
8 be subject to limitations contained in annual appropriations
9 Acts.

10 **PART 3—SMALL BUSINESS ACT AMENDMENTS**

11 **SEC. 631. SHORT TITLE.**

12 This part may be cited as the “Small Business Export
13 Expansion Act of 1980”.

14 **SEC. 632. PURPOSES.**

15 It is the purpose of this part to encourage and promote
16 small business exporting by—

17 (1) providing educational and marketing assistance
18 to small businesses;

19 (2) insuring better access to export information
20 and assistance for small businesses by upgrading and
21 expanding the export development programs and serv-
22 ices of the Department of Commerce and the Small
23 Business Administration; and

1 (3) promoting the competitive viability of such
2 firms in export trade and encouraging increased tour-
3 ism in the United States by creating a program to pro-
4 vide limited financial, technical, and management as-
5 sistance as may be necessary.

6 **SEC. 633. SMALL BUSINESS EXPORT FINANCING ASSISTANCE.**

7 (a) **LOAN ADMINISTRATION.**—Section 5(b)(7) of the
8 Small Business Act is amended to read as follows:

9 “(7) in addition to any powers, functions, privi-
10 leges, and immunities otherwise vested in him, take
11 any and all actions (including the procurement of the
12 services of attorneys by contract in any office where an
13 attorney or attorneys are not or cannot be economi-
14 cally employed full time to render such services) when
15 he determines such actions are necessary or desirable
16 in making, servicing, compromising, modifying, liqui-
17 dating, or otherwise dealing with or realizing on loans
18 made under the provisions of this Act, but nothing
19 herein shall be construed as authorizing the Adminis-
20 trator to contract or otherwise delegate his
21 responsibility for loan servicing to other than Adminis-
22 tration personnel, although, with respect to deferred
23 participation loans, he may authorize participating
24 lending institutions, in his discretion, pursuant to reg-
25 ulations promulgated by him, to take such actions on

1 his behalf, including, but not limited to, the determina-
 2 tion of eligibility and credit worthiness, and loan moni-
 3 toring, collections, and liquidation;”.

4 (b) EXPORT FINANCING ASSISTANCE.—Section 7(a) of
 5 the Small Business Act is amended by inserting “to finance
 6 export assistance,” before “to finance plant construction,”.

7 (c) CREDIT FOR FOREIGN MARKET DEVELOPMENT.—
 8 Section 7(a) of the Small Business Act is further amended by
 9 inserting before “The foregoing powers shall be subject, how-
 10 ever,” the following new sentences: “The Administration is
 11 further empowered to make or effect either directly or in co-
 12 operation with banks or other lending institutions through
 13 agreements to participate on an immediate or deferred basis
 14 extensions and revolving lines of credit for export purposes to
 15 enable small business concerns to develop foreign markets
 16 and for pre-export financing, but no such extension or revolv-
 17 ing line of credit may be made for a period or periods
 18 exceeding 18 months. A bank or participating lending insti-
 19 tution may establish the rate of interest on extensions and
 20 revolving lines of credit as may be legal and reasonable.”.

21 (d) MAXIMUM AMOUNT OF LOAN.—Section 7(a)(4) of
 22 the Small Business Act is amended by adding at the end
 23 thereof the following new sentence: “In the case of any de-
 24 ferred participation loan or extension or revolving line of
 25 credit made under this subsection for export purposes, the

1 total amount outstanding and committed (by participation or
2 otherwise) to the borrower from the revolving fund estab-
3 lished by section 4(c)(1)(B) of this Act shall not exceed
4 \$750,000.”.

5 (e) OFFICE OF INTERNATIONAL TRADE.—The Small
6 Business Act is amended by redesignating sections 16
7 through 21 as sections 17 through 22, respectively, and by
8 inserting after section 15 the following new section:

9 “SEC. 16. (a) There is established within the Adminis-
10 tration an Office of International Trade which shall imple-
11 ment the programs pursuant to this section.

12 “(b) The office shall promote sales opportunities for
13 small business goods and services abroad. To accomplish this
14 objective the office shall—

15 “(1) provide small businesses with access to cur-
16 rent and complete export information by—

17 “(A) making available, at the Administra-
18 tion’s regional offices through cooperation with
19 the Department of Commerce, export information,
20 including, but not limited to, the worldwide infor-
21 mation and trade system and world trade data
22 reports;

23 “(B) maintaining a current list of financial
24 institutions that finance export operations;

1 “(C) maintaining a current directory of all
2 Federal, regional, State, and private sector pro-
3 grams that provide export information and assist-
4 ance to small businesses; and

5 “(D) preparing and publishing such reports
6 as it determines to be necessary concerning
7 market conditions, sources of financing, export
8 promotion programs, and other information per-
9 taining to the needs of small business exporting
10 firms so as to insure that the maximum informa-
11 tion is made available to small businesses in a
12 readily usable form;

13 “(2) encourage through cooperation with the De-
14 partment of Commerce, greater small business par-
15 ticipation in trade fairs, shows, missions, and other
16 domestic and overseas export development activities of
17 the Department of Commerce; and

18 “(3) facilitate decentralized delivery of export in-
19 formation and assistance to small businesses by assign-
20 ing full time export development specialists to each
21 Administration regional office. Such specialists shall—

22 “(A) assist small businesses in obtaining
23 export information and assistance from other Fed-
24 eral departments and agencies;

1 “(B) maintain a current directory of all pro-
2 grams which provide export information and as-
3 sistance to small businesses within the region;

4 “(C) encourage financial institutions to de-
5 velop and expand programs for export financing;

6 “(D) provide advice to Administration per-
7 sonnel involved in granting loans, loan guaran-
8 tees, and extensions and revolving lines of credit,
9 and providing other forms of assistance to small
10 businesses engaged in exports; and

11 “(E) within 180 days of their appointment,
12 participate in training programs designed by the
13 Administrator, in conjunction with the Depart-
14 ment of Commerce and other Federal departments
15 and agencies, to study export programs and to ex-
16 amine small businesses needs for export informa-
17 tion and assistance.”.

18 (f) EXPORT PROMOTION CENTER.—Section 5 of the
19 Small Business Act is amended by adding at the end there-
20 of the following new subsection:

21 “(f)(1) The Administrator, after consultation with the
22 Secretary of Commerce, the President of the Export-Import
23 Bank of the United States, the President of the Overseas
24 Private Investment Corporation, and the Commissioner of
25 the Internal Revenue Service, shall establish an export pro-

1 motion center in each of two regional offices of the Adminis-
2 tration where field offices of the Department of Commerce
3 and the Internal Revenue Service exist.

4 “(2) The Export-Import Bank of the United States, the
5 Internal Revenue Service, the Overseas Private Investment
6 Corporation, the Department of Commerce and the Adminis-
7 tration shall each designate at least one full-time employee to
8 serve as such agency’s full-time representative in each such
9 center. Each person designated by the Administration shall
10 be familiar with the needs and problems of small business
11 exporting and shall serve without regard to the provisions of
12 title 5, United States Code, governing appointments in the
13 competitive service, and without regard to chapter 51, and
14 subchapter III of chapter 53 of such title relating to classifi-
15 cation and General Schedule pay rates. Each export promo-
16 tion center shall serve as a one-stop information center on
17 Federal Government export assistance, financing programs
18 available to small business, and other provisions of law gov-
19 erning exporting for small business.

20 “(3) Not later than 6 months after the enactment of the
21 National Export Policy Act of 1980, the Administrator shall
22 report to the Senate Select Committee on Small Business
23 and the Committee on Small Business of the House of Repre-
24 sentatives on the progress made in implementing the provi-
25 sions of this section.

1 “(4) Within 2 years after the date of enactment of such
2 Act, the Administration shall evaluate these export promo-
3 tion centers, including, but not limited to, an analysis of the
4 effectiveness of the center in developing and expanding small
5 business exports, and a comparison of the effectiveness of the
6 center in relation to regional offices of the Administration
7 which do not have an export promotion center. Such evalua-
8 tion shall be submitted to the Senate Select Committee on
9 Small Business and the Committee on Small Business of the
10 House of Representatives.

11 “(5) This section shall be repealed effective October 1,
12 1983.”.

13 **SEC. 634. SMALL BUSINESS EXPORT EXPANSION ASSISTANCE.**

14 (a) **GRANT AUTHORITY.**—The Secretary of Commerce
15 (hereinafter referred to as the “Secretary”) is authorized to
16 make grants (including contracts and cooperative agree-
17 ments) to a qualified applicant to encourage the development
18 and implementation of a small business international market-
19 ing program (hereinafter referred to as the “program”). Each
20 qualified applicant under this title may receive a Federal
21 grant not to exceed \$150,000 annually for each of 3 years.

22 (b) **INTERNATIONAL MARKETING PROGRAM.**—

23 (1) **ELIGIBILITY FOR GRANTS.**—To be eligible for
24 a grant under this section, an applicant proposing to
25 carry out a small business international marketing pro-

1 gram must submit to the Secretary an application dem-
2 onstrating, at a minimum:

3 (A) the geographical area to be served;

4 (B) the number of firms to be assisted;

5 (C) the staff required to administer the
6 program;

7 (D) the means to counsel small businesses in-
8 terested in pursuing export sales, including pro-
9 viding information concerning available financing,
10 credit insurance, tax treatment, potential markets
11 and marketing assistance, export pricing, ship-
12 ping, documentation, and foreign financing and
13 business customs;

14 (E) the ability to provide market analysis of
15 the export potential of small business concerns;
16 and

17 (F) the capability for developing contacts
18 with potential foreign customers and distributors
19 for small business and their products, including
20 arrangements and sponsorship of foreign trade
21 missions for small business concerns to meet with
22 identified potential customers, distributors, sales
23 representatives, and organizations interested in li-
24 censing or joint ventures, but no portion of any
25 Federal funds may be used to underwrite directly

1 any small business participation in foreign trade
2 missions abroad.

3 (2) LOCAL LEVEL SERVICES.—Program services
4 shall be provided to small business concerns through
5 outreach services at the most local level practicable.

6 (3) STAFF DIRECTORS.—Each small business in-
7 ternational marketing program shall have a full-time
8 staff director to manage program activities, and access
9 to export specialists to counsel and to assist small busi-
10 ness clients in international marketing.

11 (c) ADVISORY BOARDS.—

12 (1) IN GENERAL.—Each small business interna-
13 tional marketing program shall establish an advisory
14 board of 9 members to be appointed by the staff direc-
15 tor of the program, not less than 5 members of whom
16 shall be small business persons or representatives of
17 small business associations.

18 (2) FUNCTION.—Each advisory board shall elect a
19 chairman and shall advise, counsel, and confer with the
20 staff director of the program on all policy matters per-
21 taining to the operation of the program (including who
22 may be eligible to receive assistance, ways to promote
23 the sale of United States products and services in for-
24 eign markets or to encourage tourism in the United

1 States, and how to maximize local and regional private
2 consultant participation in the program).

3 (d) NONGOVERNMENTAL SOURCED FINANCING.—The
4 Secretary shall require, as a condition to any grant (or
5 amendment or modification thereof) made to an applicant
6 under this section, that an additional amount (excluding any
7 fees collected from recipients of such assistance) equal to
8 twice the amount of such grant be provided from sources
9 other than the Federal Government. The additional amount
10 shall not include any amount of indirect costs or in-kind con-
11 tributions paid for under any Federal program, nor shall indi-
12 rect costs or in-kind contributions exceed 50 percent of the
13 non-Federal additional amount.

14 (e) EVALUATION PLAN.—The Secretary shall develop a
15 plan to evaluate programs approved under this section which
16 shall only—

17 (1) determine the impact of small business inter-
18 national marketing programs on those small businesses
19 assisted;

20 (2) determine the amount of export sales gener-
21 ated by small businesses assisted through such pro-
22 grams; and

23 (3) make recommendations concerning continu-
24 ation or expansion of the program and possible im-
25 provements in the program structure.

1 Such evaluation shall be submitted to the Congress by Octo-
2 ber 1, 1982.

3 (f) INFORMATION.—For the purpose of the evaluation
4 under subsection (e), the Secretary is authorized to require
5 any small business international marketing program, or party
6 receiving assistance under this section, to furnish such infor-
7 mation as is deemed appropriate to complete the required
8 evaluation.

9 (g) APPLICANT DEFINED.—As used in this section, the
10 term “applicant” means any State government or agency or
11 instrumentality thereof, Small Business Administration-des-
12 ignated small business development center, for-profit small
13 business, or any combination of such entities, which will
14 carry out a small business international marketing program.

15 **SEC. 635. LOCATION; AUTHORIZATION OF APPROPRIATIONS.**

16 (a) LOCATIONS.—At least one small business interna-
17 tional program shall be established within each region of the
18 Department of Commerce.

19 (b) AUTHORIZATION OF APPROPRIATIONS.—There are
20 authorized to be appropriated to the Secretary \$1,500,000
21 for each fiscal year 1981, 1982, and 1983, to carry out the
22 program established under section 634(a).

23 **SEC. 646. CLEARINGHOUSE FUNCTION.**

24 The Secretary, through the International Trade Admin-
25 istration, shall maintain a central clearinghouse to provide for

1 the collection, dissemination, and exchange of information
2 between programs established pursuant to this part, sections
3 5(f) and 16 of the Small Business Act, and other related
4 programs.

5 **PART 4—JOINT EXPORT MARKETING ASSISTANCE**

6 **SEC. 641. ESTABLISHMENT OF PROGRAM.**

7 (a) **IN GENERAL.**—The Secretary of Commerce (herein-
8 after referred to as the “Secretary”) shall establish a pro-
9 gram in accordance with the provisions of this part to pro-
10 mote export marketing activities for domestic industry.

11 (b) **COOPERATIVE AGREEMENTS.**—The Secretary may
12 enter into cooperative agreements with industrial corpora-
13 tions or groups of noncompeting corporations with limited ex-
14 perience in exporting to develop foreign markets for their
15 products which would require a minimum 2-year effort upon
16 the approval of a proposal from such corporation or group of
17 corporations in accordance with section 642.

18 (c) **RESEARCH.**—Upon entering an agreement pursuant
19 to subsection (b) the Secretary shall direct specific market
20 research for the products involved in foreign markets—

21 (1) to measure the opportunity for particular ele-
22 ments of the product field;

23 (2) to determine advantageous methods of pursu-
24 ing opportunities; and

1 (3) to indicate the potential term of activity and
2 the prospects for success.

3 **SEC. 642. MARKETING PROPOSALS.**

4 (a) **SUBMISSION OF PROPOSAL.**—On the basis of the
5 research under section 651, interested industrial corporations
6 or groups of noncompeting corporations may prepare and
7 submit a proposal incorporating specific marketing actions, a
8 timetable for such actions and such other relevant informa-
9 tion as the Secretary may require to the Secretary for
10 approval.

11 (b) **REVIEW OF SUBMISSIONS.**—Proposals submitted
12 under subsection (a) shall be reviewed by the Secretary and
13 the Small Business Administration and any Federal agency
14 involved in the product to be marketed.

15 **SEC. 643. FINANCIAL AGREEMENT.**

16 (a) **MARKETING AGREEMENTS.**—The Secretary of
17 Commerce, after approving a proposal submitted under sec-
18 tion 642, may enter into an agreement with the entity which
19 submitted such proposal to share the cost of such marketing
20 for a period not to exceed 3 years.

21 (b) **MAXIMUM FEDERAL SHARE.**—The Federal share
22 of participation in such agreement shall not exceed 50 per-
23 cent of the reasonable costs of such program.

24 (c) **REPAYMENT REQUIREMENT.**—Any agreement en-
25 tered into under this section shall require that the entity en-

1 tering into the agreement shall repay the Federal share over
 2 a 5-year period beginning at the expiration of the Federal
 3 participation.

4 **SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated to carry out the
 6 provisions of this part such sums as may be necessary.

7 **PART 5—INTERNATIONAL EDUCATION PROGRAMS**

8 **SEC. 651. SHORT TITLE.**

9 This part may be cited as the “International Education
 10 Programs Act”.

11 **SEC. 652. HIGHER EDUCATION ACT AMENDMENTS.**

12 Title VI of the Higher Education Act is amended to
 13 read as follows:

14 **“TITLE VI—INTERNATIONAL EDUCATION**
 15 **PROGRAMS**

16 **“PART A—BUSINESS AND INTERNATIONAL EDUCATION**
 17 **PROGRAMS**

18 **“FINDINGS AND PURPOSES**

19 **“SEC. 601. (a) The Congress finds that—**

20 **“(1) the future economic welfare of the United**
 21 **States will depend substantially on increasing interna-**
 22 **tional skills in the business community and creating an**
 23 **awareness among the American public of the**
 24 **internationalization of our economy;**

1 “(2) concerted efforts are necessary to engage
2 business schools, language and area study programs,
3 public and private sector organizations, and United
4 States business in a mutually productive relationship
5 which benefits the Nation’s future economic interests;

6 “(3) few linkages presently exist between the
7 manpower and information needs of United States busi-
8 ness and the international education, language training,
9 and research capacities of institutions of higher educa-
10 tion in the United States, and public and private orga-
11 nizations; and

12 “(4) organizations such as world trade councils,
13 world trade clubs, chambers of commerce, and State
14 departments of commerce are not adequately used to
15 link universities and business for joint venture explora-
16 tion and program development.

17 “(b) It is the purpose of this part—

18 “(1) to enhance the broad objective of this Act by
19 increasing and promoting the Nation’s capacity for in-
20 ternational understanding and economic enterprise
21 through the provision of suitable international educa-
22 tion and training for business personnel in various
23 stages of professional development; and

24 “(2) to promote institutional and noninstitutional
25 educational and training activities that will contribute

1 to the ability of United States business to prosper in an
2 international economy.

3 "EDUCATION AND TRAINING PROGRAMS

4 "SEC. 602. (a) The Secretary shall make grants to, and
5 enter into contracts with, institutions of higher education to
6 pay the Federal share of the cost of programs designed to
7 promote linkages between such institutions and the American
8 business community engaged in international economic activ-
9 ity. Each program assisted under this part shall both enhance
10 the international academic programs of institutions of higher
11 education and provide appropriate services to the business
12 community which will expand its capacity to engage in com-
13 merce abroad.

14 "(b) Eligible activities to be conducted by institutions of
15 higher education under this section shall include, but are not
16 limited to—

17 "(1) innovation and improvement in international
18 education curriculums to serve the needs of the busi-
19 ness community, including development of new pro-
20 grams for nontraditional, mid-career, or part-time stu-
21 dents;

22 "(2) development of programs to inform the public
23 of increasing international economic interdependence
24 and the role of American business within the interna-
25 tional economic system;

1 “(3) internationalization of curriculums at the
2 junior and community college level, and at undergrad-
3 uate and graduate schools of business;

4 “(4) development of area studies programs and in-
5 terdisciplinary international programs;

6 “(5) establishment of export education programs
7 through cooperative arrangements with regional and
8 world trade centers and councils, and with bilateral
9 and multilateral trade associations;

10 “(6) research for and development of specialized
11 teaching materials, including language materials, and
12 facilities appropriate to business-oriented students;

13 “(7) establishment of student and faculty fellow-
14 ships and internships for training and education in in-
15 ternational business activities;

16 “(8) development of opportunities for junior busi-
17 ness and other professional school faculty to acquire or
18 strengthen international skills and perspectives; and

19 “(9) development of research programs on issues
20 of common interest to institutions of higher education
21 and private sector organizations and associations en-
22 gaged in or promoting international economic activity.

23 “(c) No grant may be made and no contract may be
24 entered into under the provisions of this part unless an insti-
25 tution of higher education submits an application at such time

1 and in such manner as the Secretary may reasonably require.
2 Each such application shall be accompanied by a copy of the
3 agreement entered into by the institution of higher education
4 with a business enterprise, trade organization, or association
5 engaged in international economic activity, or a combination
6 or consortium of such enterprises, organizations, or associ-
7 ations, for the purpose of establishing, developing, improving,
8 or expanding activities eligible for assistance under subsec-
9 tion (b) of this section. Each such application shall contain
10 assurances that the institution of higher education will use
11 the assistance provided under this part to supplement and not
12 to supplant activities conducted by institutions of higher edu-
13 cation described in subsection (b).

14 “(d) The Federal share under this part for each fiscal
15 year shall not exceed 50 percent of the cost of such program.

16 “ADVISORY BOARD

17 “SEC. 603. (a) Not less than three times each year the
18 Secretary shall convene meetings of an advisory board on the
19 conduct of programs under section 602 of this title. The
20 board shall consist of—

21 “(1) one member selected by the Secretary of
22 State;

23 “(2) one member selected by the Secretary of
24 Defense;

1 “(3) one member selected by the Secretary of the
2 Treasury;

3 “(4) one member selected by the Secretary of
4 Commerce;

5 “(5) one member selected by the Secretary to
6 serve as Chairman and coordinator of the activities of
7 the board;

8 “(6) one member selected by the Chairman of the
9 National Endowment for the Humanities;

10 “(7) one member selected by the Director of the
11 International Development Cooperation Agency;

12 “(8) one member selected by the Director of the
13 International Communication Agency;

14 “(9) one member selected by the President and
15 Chairman of the Export-Import Bank of the United
16 States;

17 “(10) one member selected by the Administrator,
18 Small Business Administration;

19 “(11) five members selected by the Secretary
20 from among representatives of the postsecondary edu-
21 cational community;

22 “(12) two members selected by the Secretary
23 from among representatives of the elementary and sec-
24 ondary education community;

1 “(13) three members selected by the Secretary
2 from among members of the public; and

3 “(14) three members selected by the Secretary
4 from among representatives of the business community.

5 “(b)(1) The advisory board shall establish two subcom-
6 mittees to carry out the functions described in paragraphs (2)
7 and (3) of this subsection.

8 “(2) The advisory board established under subsection (a)
9 shall consider the grants made, or contracts entered into,
10 under this part. The board shall advise the Secretary on (A)
11 any geographic areas of special need or concern to the United
12 States, (B) innovative approaches which may help to fulfill
13 the purposes of this title, (C) activities which are duplicative
14 of programs operated under other provisions of Federal law,
15 (D) changes which should be made in the operation of pro-
16 grams under this part to ensure that the attention of scholars
17 is attracted to problems of critical concern to United States
18 international relations, and (E) the administrative and staff-
19 ing requirements of international education programs in the
20 Department.

21 “(3) The advisory board established under subsection (a)
22 shall review the programs under section 612 and shall advise
23 the Secretary, who shall seek the advice of the Secretary of
24 Commerce, on (A) changes which should be made to advance
25 the purposes of this part and to assure the success of the

1 programs authorized by this part, (B) special needs of such
2 programs, and (C) any program elements which are dupli-
3 cative of programs operated under other provisions of Federal
4 law.

5 "AUTHORIZATION OF APPROPRIATIONS

6 "SEC. 604. There are authorized to be appropriated to
7 the Secretary of Education \$7,500,000 for fiscal year 1981
8 and for each of the succeeding fiscal years ending prior to
9 October 1, 1985, to carry out the provisions of this part.

10 "PART B—GENERAL PROVISIONS

11 "DEFINITIONS

12 "SEC. 611. (a) As used in this title—

13 "(1) the term 'area studies' means a program of
14 comprehensive study of the aspects of a society or soci-
15 eties, including study of its history, culture, economy,
16 politics, international relations, and languages;

17 "(2) the term 'international business' means
18 profit-oriented business relationships conducted across
19 national boundaries and includes activities such as the
20 buying and selling of goods; investments in industries;
21 the licensing of processes, patents, and trademarks;
22 and the supply of services;

23 "(3) the term 'export education' means educating,
24 teaching and training to provide general knowledge
25 and specific skills pertinent to the selling of goods and

1 services to other countries, including knowledge of
2 market conditions, financial arrangements, laws and
3 procedures; and

4 “(4) the term ‘internationalization of curricula’
5 means the incorporation of international or comparative
6 perspectives in existing courses of study or to add new
7 components to the curricula to provide an international
8 context for American business education.

9 “(b) All references to individuals or organizations,
10 unless the context otherwise requires, mean individuals who
11 are citizens of the United States or organizations which are
12 organized or incorporated in the United States.”.

13 **PART 6—EXPORT OF SERVICES**

14 **SEC. 661. EXPORT OF SERVICES.**

15 (a) **IN GENERAL.**—Within 6 months after the enact-
16 ment of this Act, each United States Government agency and
17 the representatives of the United States Government to any
18 international organization shall (1) identify and analyze all
19 programs which could significantly affect the export or use of
20 United States firms’ services; (2) make available to United
21 States firms which are engaged or interested in the export of
22 services from the United States such information and main-
23 tain current information about such programs; (3) establish
24 within the agency, or, in the case of international organiza-
25 tions, make the United States representatives responsible for,

1 programs to publicize export-related programs for services
2 and establish a liaison to the private sector to receive com-
3 ments regarding the development and administration of such
4 programs; and (4) undertake to modify, where feasible and
5 consistent with the laws of the United States, those programs
6 which have been determined to have a negative effect or
7 whose administration or design have an adverse effect on the
8 export of services of the United States.

9 (b) SECRETARY OF COMMERCE.—The Secretary of
10 Commerce and the Department of Commerce shall have lead
11 responsibility within the United States Government for co-
12 ordinating the programs authorized by this section and for
13 any other service-sector export promotion program except as
14 otherwise specified by law.

15 (c) DISC STUDY.—The Department of the Treasury
16 shall study and report to the Congress within 6 months after
17 the enactment of this Act the feasibility of extending DISC
18 treatment to the export of services and the reasons why serv-
19 ice industries should not receive tax treatment equivalent to
20 the manufacturing sector.

21 TITLE VII—AGRICULTURAL EXPORTS

22 SEC. 701. STATEMENT OF FINDINGS AND CONCLUSIONS.

23 (a) FINDINGS.—The Congress finds that—

24 (1) agricultural exports are vital to current and
25 future United States trade health;

1 (2) agricultural exports have been a major positive
2 factor in the United States balance of trade, exceeding
3 the value of agricultural imports for nearly 20 years; in
4 1979 agricultural exports provided a surplus of
5 \$16,000,000,000 and will provide an estimated
6 \$20,000,000,000 surplus in 1980;

7 (3) a large volume of agricultural exports is essen-
8 tial to United States agriculture—

9 (A) exports are now responsible for 15 per-
10 cent of the jobs in farming and 20 percent of
11 gross farm sales;

12 (B) production from one-third of the harvest-
13 ed acres in the United States is exported; and

14 (C) growers of rice, cotton, citrus fruits and
15 tobacco are particularly dependent on foreign
16 markets for their livelihood;

17 (4) in 1979 the \$32,000,000,000 of agricultural
18 exports provided employment for about 1,600,000
19 workers and generated \$63,000,000,000 of total eco-
20 nomic activity;

21 (5) the percentage share of total exports ac-
22 counted for by agricultural exports is high, 19 percent,
23 but there are signs that growth of the agricultural
24 product share is slowing; and

1 (6) as much as two-thirds of United States agri-
2 cultural exports are subject to some trade restriction
3 abroad.

4 (b) CONCLUSIONS.—The Congress concludes that—

5 (1) it is critical to our export efforts and to our
6 economic strength in general to insure that United
7 States agriculture can continue to maintain or improve
8 its position in world trade;

9 (2) the executive branch must continue its efforts
10 to implement the Multilateral Trade Agreement of
11 1979 and to urge further removal of tariff and nontariff
12 barriers abroad on United States agricultural products;

13 (3) adequate funds must be made available so that
14 the Department of Agriculture can continue to carry
15 out and expand its successful foreign market develop-
16 ment programs, particularly in Western Europe and
17 Japan, but also in new market areas of Southeast
18 ° Asia, the Middle East, Africa, Eastern Europe and
19 China;

20 (4) the Agricultural Trade Act of 1978 should be
21 fully and aggressively implemented, particularly with
22 regard to our overseas marketing activities;

23 (5) United States agricultural representatives
24 overseas should hold the same rank and importance as
25 our other commercial and economic representatives

1 making clear the significance the United States attaches to agricultural exports;

3 (6) the United States Government should pursue
4 policies that guarantee a dependable supply of food and
5 fiber at reasonable prices; and should only resort to
6 embargoes on export of agricultural products when our
7 foreign policy objectives can be achieved in no other
8 way;

9 (7) adequate and competitive financing for agricultural exports must be made available through the Commodity Credit Corporation credit program and the United States Export-Import Bank as required;

13 (8) efforts must be made to insure adequate availability of grain supplies, protection against wide price fluctuations and fair prices for United States grain farmers; and

17 (9) farm cooperatives must be encouraged to
18 expand their export activities by permitting them a
19 more direct role in export financing arrangements and
20 developing joint marketing ventures.

1 **PART 1—COMMODITY CREDIT CORPORATION**

2 **FINANCING FOR CERTAIN SALES**

3 **SEC. 711. FINANCING FOR SHORT-TERM EXPORT CREDIT**
4 **SALES OF AGRICULTURAL COMMODITIES.**

5 The Commodity Credit Corporation Charter Act (15
6 U.S.C. 714–714p) is amended by adding at the end thereof
7 the following new section:

8 “SEC. 20. AGRICULTURAL EXPORT CREDIT REVOLV-
9 ING FUND.—(a) There is established in the Treasury a re-
10 volving fund to be known as the Agricultural Export Credit
11 Revolving Fund, which shall be available without fiscal year
12 limitation, for (1) use in carrying out the provisions of section
13 5(f) of this Act, and (2) making loans for the construction or
14 acquisition of facilities in foreign countries to improve the
15 capacity of such countries for handling, marketing, process-
16 ing, storing, or distributing agricultural commodities pro-
17 duced in and exported from the United States.

18 “(b) All sums received by the Corporation from the liq-
19 uidation of loans made to carry out the purposes described in
20 section 5(f) shall be added to and become a part of such fund
21 together with funds appropriated to such fund.

22 “(c) There is authorized to be appropriated to the Agri-
23 cultural Export Credit Revolving Fund the sum of
24 \$2,000,000,000 during each of the fiscal years beginning
25 October 1, 1980, October 1, 1981, and October 1, 1982.

1 “(d) The Secretary shall submit an annual report to the
2 Congress not later than December 1 of each year with re-
3 spect to the export credit sales program carried out by the
4 Corporation in the last fiscal year. Such report shall include
5 the names of the countries extended credit under such pro-
6 gram, the total amount of such credit in the case of each such
7 country in such fiscal year, and a discussion and evaluation of
8 the marketing development activities of the Corporation
9 under this Act during such fiscal year. The first such report
10 shall be submitted to the Congress not later than Decem-
11 ber 1, 1980.

12 “(e) The revolving fund created by this section is abol-
13 ished effective October 1, 1983, and all unobligated money in
14 such fund on September 30, 1979, shall be transferred to and
15 become a part of the miscellaneous receipts account of the
16 Treasury.”.

17 **PART 2—EXPORT-IMPORT BANK CREDITS**

18 **SEC. 721. EXPORT-IMPORT BANK CREDITS FOR AGRICULTUR-**
19 **AL COMMODITIES.**

20 Section 2 of the Export-Import Bank Act of 1945 is
21 amended by adding at the end thereof the following:

22 “(d)(1) Subject to paragraph (2), for each fiscal year be-
23 ginning after September 30, 1980, the ratio that the amount
24 of credit which the Bank extends and in which it participates
25 to finance the export of agricultural commodities bears to the

1 total amount of credit which the Bank extends or in which it
 2 participates shall not be less than the ratio that the dollar
 3 value of exports of agricultural commodities during the imme-
 4 diately preceding fiscal year bears to the dollar value of all
 5 exports during such preceding fiscal year, except that if a
 6 significant dollar amount of any agricultural or nonagricul-
 7 tural item was embargoed in any such year, the immediately
 8 preceding fiscal year in which no such embargo occurred
 9 shall be used for purposes of this paragraph.

10 “(2) Paragraph (1) does not apply to any fiscal year
 11 with respect to which—

12 “(A) the Bank determines and reports to the Con-
 13 gress that the demand for credit to finance exports of
 14 agricultural commodities is insufficient to equal or
 15 exceed the ratio which would be required; or

16 “(B) the Secretary of Agriculture determines that
 17 the level of exports of agricultural commodities is or
 18 will be adequate without credit which the Bank ex-
 19 tends or in which it participates.”.

20 **PART 3—INTERNATIONAL WHEAT EXPORTING**

21 **COMMISSION**

22 **SEC. 731. FINDINGS.**

23 The Congress finds that—

24 (1) in order to insure an adequate supply of wheat
 25 for the world market each marketing year,

1 (2) in order to protect purchasers of wheat against
2 wide fluctuations in the price of wheat during any mar-
3 keting year, and

4 (3) in order to assist wheat producers in the
5 United States and throughout the world to obtain a fair
6 and reasonable price on the quantity of wheat produced
7 by them for export,
8 an international body composed of members from countries
9 that export substantial quantities of wheat each year should
10 be established to carry out the purposes described in section
11 732.

12 **SEC. 732. ESTABLISHMENT OF COMMISSION.**

13 The President is requested to take such action as may
14 be necessary to lead to the establishment of an International
15 Wheat Exporting Commission whose purpose would be to set
16 a minimum world market price each year for wheat exported
17 from member nations, prescribe the share of wheat, based
18 upon historic relationships, that may be exported from
19 member countries each year, and to initiate and carry out
20 such other actions as may be necessary to insure an adequate
21 supply of wheat for the world market each year, to protect
22 purchasers of wheat against wide fluctuations in the price of
23 wheat during any marketing year, and assist producers of
24 wheat throughout the world to recover at least costs of pro-

1 duction for the quantity of wheat produced by them for
2 export.

3 **SEC. 733. PROGRAM.**

4 The President is further requested to urge any such In-
5 ternational Commission which may be established to adopt a
6 program which would incorporate the following measures:

7 (1) The issuance by such Commission each year of
8 export licenses to the member nations prescribing the
9 total quantity of wheat each member nation may
10 export in such year.

11 (2) A prohibition against the export by any
12 member nation of any quantity of wheat in excess of
13 the quantity provided for in the export license issued to
14 such nation for such year.

15 (3) The quantity of wheat for which an export li-
16 cense would be issued in any year in the case of any
17 member nation would be based upon the historical
18 wheat export market share of such nation during a
19 base period and upon other relevant factors prescribed
20 by such Commission.

21 (4) A minimum market price at which wheat ex-
22 ported from member nations would be sold each year,
23 determined by such Commission.

24 (5) In determining whether the minimum price re-
25 ferred to in clause (4) is being met in the case of any

1 member nation in any year, there would be taken into
2 consideration any transportation or freight subsidy paid
3 by such nation on the wheat exported from such nation
4 in such year.

5 (6) A minimum market price at or above which no
6 export license for wheat would be required.

7 (7) An adjustment each year in the minimum sale
8 price referred to in clause (4) and the minimum price
9 referred to in clause (6) each year to take into account
10 inflation.

11 (8) Procedures for including new wheat exporting
12 nations in the membership of such Commission each
13 year with a prescribed maximum by which the mem-
14 bership could be expanded in any year.

15 (9) Provision for the imposition of a reasonable fee
16 for each export license issued by such Commission to
17 cover the expenses of the Commission.

18 **SEC. 734. PARTICIPATION BY UNITED STATES.**

19 The President may provide for participation by the
20 United States in any International Wheat Exporting Com-
21 mission described in section 732 of this part for a period of 3
22 years.

23 **SEC. 735. PRESIDENTIAL REPORTS TO CONGRESS.**

24 (a) **PROGRESS REPORTS.**—The President shall keep the
25 Congress currently informed of the actions taken by him in

1 carrying out the provisions of this part and the progress
2 being made in achieving the establishment of an International
3 Wheat Exporting Commission for wheat described in section
4 732.

5 (b) ANNUAL REPORT.—Following the establishment of
6 such a Commission, the President shall submit a written
7 report to the Congress at the end of each year describing the
8 operations of such Commission and the President's assess-
9 ment of such operations.

10 TITLE VIII—INTERNATIONAL AGREEMENTS

11 SEC. 801. FINDINGS AND CONCLUSIONS.

12 (a) FINDINGS.—The Congress finds that—

13 (1) there is a high degree of interdependence
14 among world economies today which makes it neces-
15 sary to consider the international effects of national
16 economic policies and actions,

17 (2) multilateral negotiations and agreements are
18 preferable to unilateral action as a solution to many
19 United States trade problems,

20 (3) United States international economic policy
21 has been treated as a tool of national security and for-
22 eign policy objectives rather than a major objective in
23 its own right and has consequently not been in the best
24 interests of United States economic growth,

1 (4) multinational trade agreements and codes
2 reached so far have not achieved adequate removal of
3 artificial barriers to United States products abroad, and

4 (5) the international negotiating strength of the
5 United States has been hindered by its deteriorating in-
6 ternational trade balance.

7 (b) CONCLUSIONS.—The Congress concludes that—

8 (1) international economic policy, particularly
9 trade policy, must be given highest priority among
10 United States national objectives,

11 (2) the United States must change the focus of its
12 international economic policies from helping other
13 countries achieve economic growth to helping ourselves
14 develop a stronger economy through increased exports,

15 (3) the time has come to stop thinking only of the
16 world responsibilities of the United States and start de-
17 manding its rights as an international trader through
18 international negotiations and agreements,

19 (4) trade should no longer be viewed as the only
20 foreign policy weapon of the United States to the detri-
21 ment of exports, and

22 (5) the United States must continue to seek solu-
23 tions to its international trade problems through nego-
24 tiations on such key areas as tariffs, nontariff barriers,

1 financing codes, foreign business practices, antitrust
2 applications, and international treatment of services.

3 SEC. 802. MULTILATERAL TRADE AGREEMENT OF 1979 AND
4 FOLLOWUP.

5 (a) IN GENERAL.—It is the sense of Congress that—

6 (1) the agreements on tariff provisions and codes
7 on nontariff barriers reached in the multilateral trade
8 agreement of 1979 be strongly implemented and imme-
9 diate action taken against violating nations, and

10 (2) the 1979 Multilateral Trade Agreement,
11 though an important step forward, did not achieve ade-
12 quate removal of foreign tariff and nontariff barriers to
13 United States products and services and the executive
14 branch must continue its efforts to secure a freer world
15 trading environment through multilateral negotiations.

16 (b) STANDBY PROGRAM FOR AGRICULTURAL COM-
17 MODITIES.—

18 (1) IN GENERAL.—In order to encourage the im-
19 plementation of international agreements concerning
20 agricultural commodities, the Secretary of Agriculture
21 is authorized and directed to formulate a special export
22 subsidy program for agricultural commodities. Such
23 program shall be designed to neutralize the effects of
24 export subsidy programs instituted by foreign countries
25 or instrumentalities to encourage exports of their agri-

1 cultural commodities to foreign markets other than the
2 United States.

3 (2) IMPLEMENTATION AFTER PRESIDENTIAL DE-
4 TERMINATION.—The Secretary shall implement the
5 special export subsidy program formulated under sub-
6 section (a) of this section only when the President—

7 (A) makes a determination under section 301
8 of the Trade Act of 1974 (19 U.S.C. 2411) that
9 action by the United States is appropriate to
10 obtain the elimination of an act, policy, or prac-
11 tice of a foreign country or instrumentality that
12 results in—

13 (i) substantial displacement of United
14 States exports of agricultural commodities to
15 foreign markets, or

16 (ii) prices for such commodities materi-
17 ally below prices of other suppliers of the
18 same commodity to the same market, and

19 (B) determines that such act, policy, or prac-
20 tice of the foreign country or instrumentality con-
21 cerned involves the use of an export subsidy pro-
22 gram to encourage exports of agricultural com-
23 modities to foreign markets other than the United
24 States.

1 (3) **ROLE OF COMMODITY CREDIT CORPORA-**
2 **TION.**—In carrying out the special subsidy program
3 pursuant to the provisions of subsections (a) and (b) of
4 this section, the Secretary of Agriculture is authorized
5 to utilize the funds and facilities of the Commodity
6 Credit Corporation.

7 (4) **AGRICULTURAL COMMODITY DEFINED.**—For
8 purposes of this section, the term “agricultural com-
9 modity” means any agricultural commodity produced in
10 the United States.

11 **SEC. 803. INTERNATIONAL FINANCING CODE.**

12 (a) **NEGOTIATIONS.**—It is the sense of the Congress
13 that the President should enter into negotiations with other
14 countries for the purpose of obtaining an international agree-
15 ment under which United States exporters and foreign ex-
16 porters will be placed in substantially equal competitive posi-
17 tions with respect to official export financing.

18 (b) **REPORT.**—The President shall transmit to the Con-
19 gress a report not later than January 1, 1981, concerning
20 steps taken toward the negotiation of such an international
21 export finance agreement.

22 **SEC. 804. INTERNATIONAL CODE OF BUSINESS CONDUCT.**

23 (a) **FINDINGS.**—The Congress finds that—

1 (1) American companies competing in domestic
2 and foreign markets are increasingly losing sales and
3 market shares to their foreign competitors;

4 (2) this deterioration in the international market-
5 ing position of American business jeopardizes the eco-
6 nomic health of the United States, threatens to in-
7 crease unemployment, and has aggravated inflationary
8 pressures by diminishing the international value of the
9 dollar;

10 (3) one of the significant factors causing deteriora-
11 tion in this international marketing position is the fact
12 that United States businessmen are prohibited by the
13 Foreign Corrupt Practices Act from engaging in
14 certain practices that are pursued by our trading
15 competitors;

16 (4) it is in the best interests of all industrial coun-
17 tries to maintain responsible standards of corporate
18 conduct in foreign markets; and

19 (5) the Congressional Joint Economic Committee
20 unanimously recommended in its 1980 Annual Report
21 that the answer to this problem is not a relaxation of
22 standards of American business in foreign and domestic
23 trade, but an insistence upon the elimination of corrupt
24 practices by foreign nationals and, consequently, that
25 the President should initiate an effort to encourage ad-

herence to the principles contained in the Foreign Corrupt Practices Act by our competitors and customers abroad, utilizing international forums and other appropriate multilateral channels.

(b) CONCLUSIONS.—It is the sense of the Congress that—

(1) the President shall utilize appropriate international fora to urge the development and adoption of an International Code of Business Conduct,

(2) the President should pursue the negotiation of bilateral and multilateral agreements among the largest possible number of industrialized and developing countries which would establish standards of ethical and equitable conduct of international business and which would establish the mechanisms to resolve the diplomatic, commercial, and legal problems associated with such practices, and

(3) on January 2, 1981, the President shall report back to the Congress as to the progress on these negotiations.

(c) JOINT ECONOMIC COMMITTEE RECOMMENDATIONS.—Within 60 days of receipt of the President's report, the Joint Economic Committee shall report to the Congress its recommendations as to how best to proceed with negotiations toward an international code of business conduct or how

1 otherwise to rectify the current competitive imbalance which
2 adversely affects United States exports of goods and services.

3 **SEC. 805. INTERNATIONAL CODE ON RECIPROCITY ON EN-**
4 **FORCEMENT OF ANTITRUST.**

5 It is the sense of the Congress that—

6 (1) the executive branch seek an international
7 agreement that achieves multinational harmonization of
8 antitrust laws for the purpose of overriding the imposi-
9 tion of conflicting judicial and regulatory requirements
10 on the separate components of multinational enterprise,

11 (2) all nations be urged to adopt uniform antitrust
12 policies, and

13 (3) that a permanent international body open to
14 all countries under the aegis of the OECD be estab-
15 lished to resolve jurisdictional conflicts in antitrust
16 matters.

17 **SEC. 806. MULTILATERAL CODE ON FAIR TRADE IN SERVICES.**

18 It is the sense of Congress that the United States should
19 undertake to obtain a multilateral code for the treatment of
20 international trade in services, including investment. Further-
21 more, it is the sense of Congress that until such an interna-
22 tional code is agreed to the principles of fairness and equity
23 should apply to such trade in services, including reciprocity
24 of treatment and mutual, equivalent benefits.

1 **TITLE IX—GOVERNMENT SUPPORT OF EXPORT**
2 **GOALS**

3 **PART 1—FINDINGS AND CONCLUSIONS**

4 **SEC. 901. STATEMENT OF FINDINGS AND CONCLUSIONS.**

5 (a) **FINDINGS.**—The Congress finds that—

6 (1) many United States Government organizations
7 not directly associated with international trade activi-
8 ties and policies, have an impact on United States
9 exports,

10 (2) those organizations are not sufficiently aware
11 of the importance of exports to United States national
12 goals, and, therefore, are not making decisions and
13 taking actions that will assist our export efforts, and

14 (3) other successful trading nations have placed
15 high priority on export expansion and can rely on
16 consistent support for that goal from all arms of
17 government.

18 (b) **CONCLUSIONS.**—The Congress concludes that—

19 (1) to achieve our goal of export expansion, all of
20 the available resources of the United States Govern-
21 ment must be used to assist and promote the export of
22 United States goods and services except where con-
23 trary to the national security or national economic in-
24 terests, and

1 (2) in addition to the United States Trade Repre-
 2 sentative; the United States Department of Com-
 3 merce's International Trade Administration, the De-
 4 partment of Agriculture's Foreign Agricultural Service,
 5 and the Department of State, which have specific
 6 export promotion functions, all other departments,
 7 agencies, and organizations (including, but not limited
 8 to, the Office of Management and Budget, the Justice
 9 Department, the Overseas Private Investment Corpo-
 10 ration, the International Development and Cooperation
 11 Agency, the Department of Education, the Department
 12 of Energy, the Small Business Administration, the
 13 Treasury Department, and the Congress) will consider
 14 the impact on exports of their policies, decisions, and
 15 programs and where possible and appropriate, take
 16 positive steps to help export expansion goals.

17 **PART 2—OVERSEAS PRIVATE INVESTMENT**
 18 **CORPORATION AMENDMENTS**

19 **SEC. 921. SHORT TITLE.**

20 This part may be cited as the "Overseas Private Invest-
 21 ment Corporation Act of 1980".

22 **Subpart A—Overseas Private Investment Corporation**

23 **SEC. 925. PURPOSE AND POLICY.**

24 (a) **ESTABLISHMENT AS INDEPENDENT AGENCY.**—The
 25 Overseas Private Investment Corporation (the "Corpora-

tion'') created by the Foreign Assistance Act of 1969 is hereby established as an independent agency of the United States of America. The Corporation shall serve the national interest by mobilizing and facilitating the participation of United States private capital and skills in less developed friendly countries and areas in order to increase United States trade with, and contribute to the economic and social development of, such countries and areas.

(b) FUNCTIONS.—In carrying out its purpose, the Corporation, utilizing broad criteria, shall undertake—

(1) to conduct financing, insurance, and reinsurance operations on a self-sustaining basis, taking into account in its financing operations the economic and financial soundness of projects;

(2) to utilize private credit and investment institutions and the Corporation's guaranty authority as the principal means of mobilizing capital investment funds;

(3) to broaden private participation and revolve its funds through selling its direct investments to private investors whenever it can appropriately do so on satisfactory terms;

(4) to conduct its insurance operations with due regard to principles of risk management including efforts to share its insurance risks and reinsurance risks;

1 (5) to the maximum degree possible consistent
2 with its purposes—

3 (A) to give preferential consideration in its
4 investment insurance, reinsurance, and guaranty
5 activities to investment projects sponsored by or
6 involving United States small business; and

7 (B) to increase the proportion of projects
8 sponsored by or significantly involving United
9 States small business to at least 30 percent of all
10 projects insured, reinsured, or guaranteed by the
11 Corporation;

12 (6) to consider in the conduct of its operations the
13 extent to which less-developed country governments
14 are receptive to private enterprise, domestic and for-
15 eign, and their willingness and ability to maintain con-
16 ditions which enable private enterprise to make its full
17 contribution to the development process;

18 (7) to foster private initiative and competition and
19 discourage monopolistic practices;

20 (8) to further to the greatest degree possible, in a
21 manner consistent with its goals, the balance-of-pay-
22 ments and employment objectives of the United States;

23 (9) to conduct its activities in consonance with the
24 international trade, investment, financial, development,
25 and foreign policies of the United States Government;

1 (10) to advise and assist, within its field of compe-
2 tence, interested agencies of the United States and
3 other organizations, both public and private, national
4 and international, with respect to projects and pro-
5 grams relating to the development of private enterprise
6 in less-developed countries and areas;

7 (11)(A) to decline to issue any contract of insur-
8 ance or reinsurance, or any guaranty, or to enter into
9 any agreement to provide financing for an eligible in-
10 vestor's proposed investment if the Corporation deter-
11 mines that such investment is likely to cause such in-
12 vestor (or the sponsor of an investment project in
13 which such investor is involved) significantly to reduce
14 the number of his employees in the United States be-
15 cause he is replacing his United States production with
16 production from such investment which involves sub-
17 stantially the same product for substantially the same
18 market as his United States production; and (B) to
19 monitor conformance with the representations of the
20 investor on which the Corporation relied in making the
21 determination required by clause (1);

22 (12) to decline to issue any contract of insurance
23 or reinsurance, or any guaranty, or to enter into any
24 agreement to provide financing for an eligible inves-
25 tor's proposed investment if the Corporation deter-

1 mines that such investment is likely to cause a signifi-
2 cant reduction in the number of employees in the
3 United States; and

4 (13) to the maximum extent practicable, to give
5 preferential consideration in the Corporation's oper-
6 ations to investment projects in the less developed
7 friendly countries and areas which have per capita in-
8 comes of \$580 or less in 1977 dollars.

9 **SEC. 926. CAPITAL OF CORPORATION.**

10 The capital of the Corporation shall consist of
11 \$50,000,000 of which \$40,000,000 has been made available
12 and paid in through the appropriation process and
13 \$10,000,000 has been made available through a transfer
14 from the Corporation's earned income. The Corporation may
15 increase its capital from time to time by transfers from its
16 earned income. Capital paid into the Corporation shall be
17 evidenced by an equivalent amount of capital stock issued to
18 the Secretary of the Treasury.

19 **SEC. 927. ORGANIZATION AND MANAGEMENT.**

20 (a) **STRUCTURE OF THE CORPORATION.**—The Corpo-
21 ration shall have a Board of Directors, a President, an Ex-
22 ecutive Vice President, and such other officers and staff as
23 the Board of Directors may determine.

24 (b) **BOARD OF DIRECTORS.**—All powers of the Corpo-
25 ration shall vest in and be exercised by or under the authority

1 of its Board of Directors (the "Board") which shall consist of
2 13 Directors, including the Chairman. The United States
3 Trade Representative shall be the Chairman of the Board, ex
4 officio. The Director of the United States International De-
5 velopment Cooperation Agency shall be the Vice Chairman
6 of the Board, ex officio. Seven Directors (other than the
7 President of the Corporation, appointed pursuant to subsec-
8 tion (c) who shall also serve as a Director) shall be appointed
9 by the President of the United States, by and with the advice
10 and consent of the Senate, and shall not be officials or em-
11 ployees of the Government of the United States. At least 1 of
12 the 7 Directors appointed under the preceding sentence shall
13 be experienced in small business, one in organized labor, one
14 in cooperatives, and one in international trade. Each such
15 Director shall be appointed for a term of no more than 3
16 years. The terms of no more than 3 such Directors shall
17 expire in any one year. Such Directors shall serve until their
18 successors are appointed and qualified and may be reap-
19 pointed. The other Directors shall be officials of the Govern-
20 ment of the United States, designated by and serving at the
21 pleasure of the President of the United States. All Directors
22 who are not officers of the Corporation or officials of the
23 Government of the United States shall be compensated at a
24 rate equivalent to that of level IV of the Executive Schedule
25 (5 U.S.C. 5315) when actually engaged in the business of the

1 Corporation and may be paid per diem in lieu of subsistence
2 at the applicable rate prescribed in the standardized Govern-
3 ment travel regulations, as amended, from time to time,
4 while away from their homes or usual places of business.

5 (c) **PRESIDENT OF THE CORPORATION.**—The Presi-
6 dent of the Corporation shall be appointed by the President of
7 the United States, by and with the advice and consent of the
8 Senate, and shall serve at the pleasure of the President. In
9 making such appointment, the President shall take into ac-
10 count private business experience of the appointee. The
11 President of the Corporation shall be its Chief Executive Of-
12 ficer and responsible for the operations and management of
13 the Corporation, subject to bylaws and policies established by
14 the Board.

15 (d) **OFFICERS AND STAFF.**—The Executive Vice Presi-
16 dent of the Corporation shall be appointed by the President of
17 the United States, by and with the advice and consent of the
18 Senate, and shall serve at the pleasure of the President.
19 Other officers, attorneys, employees, and agents shall be se-
20 lected and appointed by the Corporation, and shall be vested
21 with such powers and duties as the Corporation may deter-
22 mine. Of such persons employed by the Corporation, not to
23 exceed twenty-five may be appointed, compensated, or re-
24 moved without regard to the civil service laws and regula-
25 tions. Under such regulations as the President of the United

1 States may prescribe, officers and employees of the United
2 States Government who are appointed to any of the above
3 positions may be entitled, upon removal from such position,
4 except for cause, to reinstatement to the position occupied at
5 the time of appointment or to a position of comparable grade
6 and salary. Such positions shall be in addition to those other-
7 wise authorized by law, including those authorized by section
8 5108 of title 5, United States Code.

9 (e) EXPERTS, CONSULTANTS, AND RETIRED OFFI-
10 CERS.—Experts and consultants or organizations thereof
11 may, as authorized by section 3109 of title 5, United States
12 Code, be employed for the performance of functions under
13 this part, and individuals so employed may be compensated
14 at rates not in excess of the daily equivalent of the highest
15 rate which may be paid to an employee under the General
16 Schedule established by section 5332 of title 5, United States
17 Code, and while away from their homes or regular places of
18 business, they may be paid actual travel expenses and per
19 diem in lieu of subsistence at the applicable rate prescribed in
20 the standardized Government travel regulations. Such con-
21 tracts may be renewed from time to time without limitation.
22 Service of an individual as an expert or consultant under this
23 subsection shall not be considered as employment or holding
24 of office or position bringing such individual within the provi-
25 sions of section 3323(a) of title 5, United States Code.

1 SEC. 928. INVESTMENT INSURANCE AND OTHER PROGRAMS.

2 (a) The Corporation is hereby authorized to do the
3 following:

4 (1) INVESTMENT INSURANCE.—

5 (A) To issue insurance, upon such terms and
6 conditions as the Corporation may determine, to
7 eligible investors assuring protection in whole or
8 in part against any or all of the following risks
9 with respect to projects which the Corporation
10 has approved—

11 (i) inability to convert into United
12 States dollars other currencies, or credits in
13 such currencies, received from or in respect
14 of the project;

15 (ii) loss due to expropriation or confisca-
16 tion by action of a foreign government; and

17 (iii) loss due to war, revolution, insur-
18 rection, or civil strife.

19 (B) Recognizing that major private invest-
20 ments in less developed friendly countries or areas
21 are often made by enterprises in which there is
22 multinational participation, including significant
23 United States private participation, the Corpora-
24 tion may make arrangements with foreign govern-
25 ments (including agencies, instrumentalities, or
26 political subdivisions thereof) or with multilateral

1 organizations and institutions for sharing liabilities
2 assumed under investment insurance for such in-
3 vestments and may in connection therewith issue
4 insurance to investors not otherwise eligible here-
5 under, except that liabilities assumed by the Cor-
6 poration under the authority of this subsection
7 shall be consistent with the purposes of this title
8 and that the maximum share of liabilities so as-
9 sumed shall not exceed the proportionate partici-
10 pation by eligible investors in the total project
11 financing.

12 (C) Not more than 10 percent of the maxi-
13 mum contingent liability of investment insurance
14 which the Corporation is authorized to issue
15 under this subsection shall be issued to a single
16 investor.

17 (2) INVESTMENT GUARANTIES.—To issue to eli-
18 gible investors guaranties of loans and other invest-
19 ments made by such investors assuring against loss due
20 to such risks and upon such terms and conditions as
21 the Corporation may determine, but such guaranties on
22 other than loan investments shall not exceed 75 per-
23 cent of such investment, and except for loan invest-
24 ments for credit unions made by eligible credit unions
25 or credit union associations, the aggregate amount of

1 investment (exclusive of interest and earnings) so guar-
2 anteed with respect to any project shall not exceed, at
3 the time of issuance of any such guaranty, 75 percent
4 of the total investment committed to any such project
5 as determined by the Corporation, which determination
6 shall be conclusive for purposes of the Corporation's
7 authority to issue any such guaranty, but not more
8 than 10 percent of the maximum contingent liability of
9 investment guaranties which the Corporation is author-
10 ized to issue as set forth in section 929(a)(2) shall be
11 issued to a single investor.

12 (3) DIRECT INVESTMENT.—To make loans in
13 United States dollars repayable in dollars or loans in
14 foreign currencies (including, without regard to section
15 1415 of the Supplemental Appropriation Act, 1953,
16 such foreign currencies which the Secretary of the
17 Treasury may determine to be excess to the normal re-
18 quirements of the United States and the Director of
19 the Bureau of the Budget may allocate) to firms pri-
20 vately owned or of mixed private and public ownership
21 upon such terms and conditions as the Corporation
22 may determine. The Corporation may not purchase or
23 invest in any stock in any other corporation, except
24 that it may (A) accept as evidence of indebtedness debt
25 securities convertible to stock, but such debt securities

1 shall not be converted to stock while held by the Cor-
2 poration, and (B) acquire stock through the enforce-
3 ment of any lien or pledge or otherwise to satisfy a
4 previously contracted indebtedness which would other-
5 wise be in default, or as the result of any payment
6 under any contract of insurance or guaranty. The Cor-
7 poration shall dispose of any stock it may so acquire as
8 soon as reasonably feasible under the circumstances
9 then pertaining. Loans may be made under this subsec-
10 tion only for projects that are sponsored by or signifi-
11 cantly involve United States small business or
12 cooperatives.

13 (4) INVESTMENT ENCOURAGEMENT.—To initiate
14 and support through financial participation, incentive
15 grant, or otherwise, and on such terms and conditions
16 as the Corporation may determine, the identification,
17 assessment, surveying and promotion of private invest-
18 ment opportunities, utilizing wherever feasible and ef-
19 fective the facilities of private investors, except that—

20 (A) the Corporation shall not finance any
21 survey to ascertain the existence, location, extent,
22 or quality of, or to determine the feasibility of un-
23 dertaking operations for the extraction of oil or
24 gas; and

1 (B) expenditures financed by the Corporation
2 during any fiscal year on surveys to ascertain the
3 existence, location, extent, or quality of, or to de-
4 termine the feasibility of undertaking operations
5 for the extraction of nonfuel minerals may not
6 exceed \$200,000.

7 (5) SPECIAL ACTIVITIES.—To administer and
8 manage special projects and programs, including pro-
9 grams of financial and advisory support which provide
10 private technical, professional, or managerial assistance
11 in the development of human resources, skills, technol-
12 ogy, capital savings, and intermediate financial and in-
13 vestment institutions and cooperatives. The funds for
14 these projects and programs may, with the Corpora-
15 tion's concurrence, be transferred to it for such pur-
16 poses from other sources, public or private.

17 (6) OTHER INSURANCE FUNCTIONS.—

18 (A) To make and carry out contracts of in-
19 surance or reinsurance, or agreements to associate
20 or share risks, with insurance companies, financial
21 institutions, any other persons, or groups thereof,
22 and employing the same where appropriate, as its
23 agent, or acting as their agent, in the issuance
24 and servicing of insurance, the adjustment of
25 claims, the exercise of subrogation rights, the

1 ceding and accepting of reinsurance, and in any
2 other matter incident to an insurance business;
3 except that (i) such agreements and contracts
4 shall be consistent with the purposes of the Cor-
5 poration set forth in section 925 of this Act and
6 shall be on equitable terms and (ii) the Corpora-
7 tion shall not make or carry out any association
8 or risk-sharing agreement for the direct under-
9 writing of insurance by the Corporation with
10 others, other than on an individual basis where
11 such direct underwriting facilitates the purposes of
12 the Corporation as set forth in section 925 of this
13 Act.

14 (B) To enter into pooling or other risk-shar-
15 ing agreements with other national or multina-
16 tional insurance or financing agencies as groups of
17 such agencies.

18 (C) To hold an ownership interest in any as-
19 sociation or other entity established for the pur-
20 poses of sharing risks under investment insurance.

21 (D) To issue, upon such terms and conditions
22 as it may determine, reinsurance of liabilities as-
23 sumed by other insurers or groups thereof in re-
24 spect of risks referred to in paragraph (1)(A).

1 (b) The authority granted by subparagraph (C) may be
2 exercised notwithstanding the prohibition under paragraph
3 (3) against the Corporation purchasing or investing in any
4 stock in any other corporation. The amount of reinsurance of
5 liabilities under this part which the Corporation may issue
6 shall not in the aggregate exceed at any one time an amount
7 equal to the amount authorized for the maximum contingent
8 liability outstanding at any one time under section 929(a)(1).
9 All reinsurance issued by the Corporation under this subsec-
10 tion shall require that the reinsured party retain for his own
11 account specified portions of liability, whether first loss or
12 otherwise.

13 **SEC. 929. ISSUING AUTHORITY, DIRECT INVESTMENT FUND**
14 **AND RESERVES.**

15 (a)(1) **LIABILITY UNDER SECTION 928(a).**—The maxi-
16 mum contingent liability outstanding at any one time pursu-
17 ant to insurance issued under section 928(a) shall not exceed
18 \$10,000,000,000.

19 (2) **LIABILITY UNDER SECTION 928(b).**—The maxi-
20 mum contingent liability outstanding at any one time pursu-
21 ant to guaranties issued under section 928(b) shall not exceed
22 in the aggregate \$1,000,000,000.

23 (3) **LIMITATION.**—The Corporation shall not make any
24 commitment to issue any investment guaranty that would
25 result in a fractional reserve less than 25 percent of the

1 maximum contingent liability then outstanding against guar-
2 anties issued or commitments made pursuant to section
3 928(b) or similar predecessor guaranty authority.

4 (4) LIMITATION BY CONGRESS.—The Congress, in con-
5 sidering the budget programs transmitted by the President
6 for the Corporation, pursuant to section 104 of the Govern-
7 ment Corporation Control Act, as amended, may limit the
8 obligations and contingent liabilities to be undertaken under
9 section 928 (a) and (b) as well as the use of funds for operat-
10 ing and administrative expenses.

11 (5) CONTINUATION OF AUTHORITY.—The authority of
12 section 928 (a) and (b) shall continue until September 30,
13 1985.

14 (b) REVOLVING FUND.—There shall be established a re-
15 volving fund, known as the Direct Investment Fund, to be
16 held by the Corporation. Such fund shall consist initially of
17 amounts made available under section 926, shall be available
18 for the purposes authorized under section 926(c), shall be
19 charged with realized losses and credited with realized gains
20 and shall be credited with such additional sums as may be
21 transferred to it under the provisions of section 930.

22 (c) INSURANCE AND GUARANTY FUND.—There shall
23 be established in the Treasury of the United States an insur-
24 ance and guaranty fund, which shall have separate accounts
25 to be known as the Insurance Reserve and the Guaranty

1 Reserve, which reserves shall be available for discharge of
2 liabilities, as provided in section 929(d), until such time as all
3 such liabilities have been discharged or have expired or until
4 all such reserves have been expended in accordance with the
5 provisions of this section. Such fund shall be funded by: (1)
6 the funds heretofore transferred to the Corporation out of
7 funds available to discharge liabilities under predecessor
8 guaranty authority or made available to the Corporation
9 under predecessor guaranty authority, and (2) such sums as
10 shall be appropriated pursuant to section 929(e) for such pur-
11 poses. The allocation of such funds to each such reserve shall
12 be determined by the Board after consultation with the Sec-
13 retary of the Treasury. Additional amounts may thereafter be
14 transferred to such reserves pursuant to section 930.

15 (d) PAYMENTS.—Any payment made to discharge li-
16 abilities under investment insurance or reinsurance issued
17 under section 928 or under similar predecessor guaranty au-
18 thority shall be paid first out of the insurance reserve, as long
19 as such reserve remains available, and thereafter out of funds
20 made available pursuant to section 929(e). Any payments
21 made to discharge liabilities under guaranties issued under
22 section 928(b) or under similar predecessor guaranty author-
23 ity shall be paid first out of the guaranty reserve as long as
24 such reserve remains available, and thereafter out of funds
25 made available pursuant to section 929(e).

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There are
2 authorized to be appropriated to the Corporation, to remain
3 available until expended, such amounts as may be necessary
4 from time to time to replenish or increase the insurance and
5 guaranty fund, to discharge the liabilities under insurance,
6 reinsurance, or guaranties issued by the Corporation or
7 issued under predecessor guaranty authority, or to discharge
8 obligations of the Corporation purchased by the Secretary of
9 the Treasury pursuant to this subsection. However, no ap-
10 propriations shall be made to augment the insurance reserve
11 until the amount of funds in the insurance reserve is less than
12 \$25,000,000. Any appropriations to augment the insurance
13 reserve shall then only be made either pursuant to specific
14 authorization enacted after the date of enactment of this Act,
15 or to satisfy the full faith and credit provision of section 931.
16 In order to discharge liabilities under investment insurance,
17 reinsurance or guaranties, the Corporation is authorized to
18 issue from time to time for purchase by the Secretary of the
19 Treasury its notes, debentures, bonds, or other obligations;
20 but the aggregate amount of such obligations outstanding at
21 any one time shall not exceed \$250,000,000. Any such obli-
22 gation shall be repaid to the Treasury within 2 years after
23 the date of issue of such obligation. Any such obligation shall
24 bear interest at a rate determined by the Secretary of the
25 Treasury, taking into consideration the current average

1 market yield on outstanding marketable obligations of the
2 United States of comparable maturities during the month
3 preceding the issuance of any obligation authorized by this
4 subsection. The Secretary of the Treasury shall purchase any
5 obligation of the Corporation issued under this subsection,
6 and for such purchase he may use as a public debt transac-
7 tion the proceeds of the sale of any securities issued under
8 the Second Liberty Bond Act after the date of enactment of
9 this Act. The purpose for which securities may be issued
10 under such Bond Act shall include any such purchase.

11 **SEC. 930. INCOME AND REVENUES.**

12 In order to carry out the purposes of the Corporation,
13 all revenues and income transferred to or earned by the Cor-
14 poration, from whatever source derived, shall be held by the
15 Corporation and shall be available to carry out its purposes,
16 including without limitation—

17 (1) payment of all expenses of the Corporation, in-
18 cluding investment promotion expenses;

19 (2) transfers and additions to the insurance or
20 guaranty reserves, the direct investment fund estab-
21 lished pursuant to section 929, the capital of the Cor-
22 poration, and such other funds or reserves as the Cor-
23 poration may establish, at such time and in such
24 amounts as the Board may determine; and

1 (3) payment of dividends, on capital stock, which
2 shall consist of and be paid from net earnings of the
3 Corporation after payments, transfers, and additions
4 under paragraphs (1) and (2).

5 **SEC. 931. GENERAL PROVISIONS RELATING TO INSURANCE**
6 **AND GUARANTY PROGRAM.**

7 (a) **IN GENERAL.**—Insurance, guaranties, and reinsur-
8 ance issued under this Act shall cover investment made in
9 connection with projects in any less developed friendly coun-
10 try or area with the government to which the President of
11 the United States has agreed to institute a program for insur-
12 ance, guaranties, or reinsurance. The Corporation shall de-
13 termine that suitable arrangements exist for protecting the
14 interest of the Corporation in connection with any insurance,
15 guaranty, or reinsurance issued under this Act, including ar-
16 rangements concerning ownership, use, and disposition of the
17 currency, credits, assets, or investments on account of which
18 payment under such insurance, guaranty, or reinsurance is to
19 be made, and right, title, claim, or cause of action existing in
20 connection therewith.

21 (b) **CERTAIN PRE-EXISTING OBLIGATIONS.**—All guar-
22 anties issued prior to July 1, 1956, all guaranties issued
23 under sections 202(b) and 413(b) of the Mutual Security Act
24 of 1954, all guaranties heretofore issued pursuant to prior
25 guaranty authorities repealed by the Foreign Assistance Act

1 of 1969, all insurance, reinsurance, and guaranties issued
2 pursuant to title IV of the Foreign Assistance Act of 1961,
3 and this Act shall constitute obligations, in accordance with
4 the terms of such insurance, reinsurance, or guaranties, of
5 the United States of America and the full faith and credit of
6 the United States of America is hereby pledged for the full
7 payment and performance of such obligations.

8 (c) FEES.—Fees shall be charged for insurance, guaran-
9 ty, and reinsurance coverage in amounts to be determined by
10 the Corporation. In the event fees charged for investment
11 insurance, guaranties, or reinsurance are reduced, fees to be
12 paid under existing contracts for the same type of insurance,
13 guaranties, or reinsurance and for similar guaranties issued
14 under predecessor guaranty authority may be reduced.

15 (d) LIMITATION ON PERIOD.—No insurance, guaranty,
16 or reinsurance of any equity investment shall extend beyond
17 20 years from the date of issuance.

18 (e) LIMITATION ON COMPENSATION.—Compensation
19 for insurance, reinsurance, or guaranties issued under this
20 Act shall not exceed the dollar value, as of the date of the
21 investment, of the investment made in the project with the
22 approval of the Corporation plus interest, earnings or profits
23 actually accrued on said investment to the extent provided by
24 such insurance, reinsurance, or guaranty, except that the
25 Corporation may provide (1) that appropriate adjustments in

1 the insured dollar value be made to reflect the replacement
2 cost of project assets, and (2) that compensation for loss
3 under insurance of equity investment shall be equal to the net
4 book value attributable to such equity investment on the date
5 of loss. The Corporation shall limit the amount of direct in-
6 surance and reinsurance issued by it under section 104 so
7 that risk of loss as to at least 10 percent of the total invest-
8 ment of the insured and its affiliates in the project is borne by
9 the insured and such affiliates, except that limitation shall not
10 apply to direct insurance or reinsurance of (1) investments by
11 small businesses or (2) loans by banks or other financial insti-
12 tutions to unrelated parties.

13 (f) FRAUD, ETC.—No payment may be made under any
14 guaranty, insurance, or reinsurance issued pursuant to this
15 Act for any loss arising out of fraud or misrepresentation for
16 which the party seeking payment is responsible.

17 (g) FOREIGN INVESTMENT INSURANCE.—Insurance,
18 guaranties, or reinsurance of a loan or equity investment of
19 an eligible investor in a foreign bank, finance company, or
20 other credit institution shall extend only to such loan or
21 equity investment and not to any individual loan or equity
22 investment made by such foreign bank, finance company, or
23 other credit institution.

24 (h) PAYMENT OF CLAIMS.—Claims arising as a result
25 of insurance, reinsurance or guaranty operations under this

1 part or under predecessor guaranty authority may be settled,
2 and disputes arising as a result thereof may be arbitrated
3 with the consent of the parties, on such terms and conditions
4 as the Corporation may determine. Payment made pursuant
5 to any such settlement, or as a result of an arbitration award,
6 shall be final and conclusive notwithstanding any other provi-
7 sion of law.

8 (i) **CONTRACTS PRESUMED TO COMPLY.**—Each guar-
9 anty contract executed by such officer or officers as may be
10 designated by the Board shall be conclusively presumed to be
11 issued in compliance with the requirements of this part.

12 (j) **LIMITATIONS ON PAYMENTS.**—

13 (1) No payment may be made under any insur-
14 ance or reinsurance which is issued under this part on
15 or after the date of enactment of this Act for any loss
16 occurring with respect to a project, if the preponderant
17 cause of such loss was an act by the investor seeking
18 payment under this part, by a person possessing major-
19 ity ownership and control of the investor at the time of
20 the act, or by any agent of such investor or controlling
21 person, and a court of the United States has entered a
22 final judgment that such act constituted a violation
23 under the Foreign Corrupt Practices Act of 1977.

24 (2) The Corporation shall adopt regulations set-
25 ting forth appropriate conditions under which any

1 person convicted under the Foreign Corrupt Practices
2 Act of 1977 for an offense related to a project insured
3 or otherwise supported by the Corporation shall be
4 suspended, for a period of not more than 5 years, from
5 eligibility to receive any insurance, reinsurance, guar-
6 anty loan, or other financial support authorized by this
7 Act.

8 **SEC. 932. DEFINITIONS.**

9 As used in this part—

10 (1) the term “investment” includes any contribu-
11 tion or commitment of funds, commodities, capital
12 goods, equipment, services, patents, processes, or tech-
13 niques, in the form of (A) a loan or loans to an ap-
14 proved project, (B) the purchase of a share of owner-
15 ship in any such project, (C) participation in royalties,
16 earnings, or profits of any such project, and (D) the
17 furnishing of commodities, capital goods, equipment or
18 services pursuant to a lease or other contract;

19 (2) the term “expropriation” includes, but is not
20 limited to, any abrogation, repudiation, or impairment
21 by a foreign government of its own contract with an
22 investor with respect to a project, where such abroga-
23 tion, repudiation, or impairment is not caused by the
24 investor’s own fault or misconduct, and materially ad-
25 versely affects the continued operation of the project;

1 (3) the term "eligible investor" means: (A) United
2 States citizens; (B) corporations, partnerships, or other
3 associations including nonprofit associations, created
4 under the laws of the United States or any State or
5 territory thereof in which the United States citizens
6 have a significant interest; and (C) foreign corpora-
7 tions, partnerships, or other associations majority con-
8 trol of which is held by such United States citizens,
9 corporations, partnerships, or other associations, how-
10 ever, in the case of any loan investment a final deter-
11 mination of eligibility may be made at the time the in-
12 surance or guaranty is issued; in all other cases, the
13 investor must be eligible at the time a claim arises as
14 well as the time the insurance or guaranty is issued;
15 and

16 (4) the term "predecessor guaranty authority"
17 means prior guaranty authorities (other than housing
18 guaranty authorities) repealed by this part, the Foreign
19 Assistance Act of 1969, sections 202(b) and 413(b) of
20 the Mutual Security Act of 1954, and section 111(b)(3)
21 of the Economic Cooperation Act of 1948, as amended
22 (exclusive of authority relating to informational media
23 guaranties).

1 SEC. 933. GENERAL PROVISIONS AND POWERS.

2 (a) PRINCIPAL OFFICE.—The Corporation shall have
3 its principal office in the District of Columbia and shall be
4 deemed, for purposes of venue in civil actions, to be resident
5 thereof.

6 (b) PREDECESSOR PROGRAMS.—The Corporation shall
7 retain all obligations, assets, and related rights and responsi-
8 bilities arising out of, or related to, predecessor programs and
9 authorities similar to those provided for in section 928 (a),
10 (b), and (d).

11 (c) GOVERNMENT CORPORATION CONTROL ACT.—The
12 Corporation shall be subject to the applicable provisions of
13 the Government Corporation Control Act, except as other-
14 wise provided in this Act.

15 (d) GENERAL AUTHORITY.—To carry out the purposes
16 of this Act, the Corporation is authorized to adopt and use a
17 corporate seal, which shall be judicially noticed; to sue and
18 be sued in its corporate name; to adopt, amend, and repeal
19 bylaws governing the conduct of its business and the per-
20 formance of the powers and duties granted to or imposed
21 upon it by law; to acquire, hold, or dispose of, upon such
22 terms and conditions as the Corporation may determine, any
23 property, real, personal, or mixed, tangible or intangible, or
24 any interest therein; to invest funds derived from fees and
25 other revenues in obligations of the United States and to use
26 the proceeds therefrom, including earnings and profits, as it

1 shall deem appropriate; to indemnify directors, officers, em-
2 ployees, and agents of the Corporation for liabilities and ex-
3 penses incurred in connection with their Corporation activi-
4 ties; to require bonds of officers, employees, and agents and
5 pay the premiums therefor; notwithstanding any other provi-
6 sion of law, to represent itself or to contract for representa-
7 tion in all legal and arbitral proceedings; to purchase, dis-
8 count, rediscount, sell, and negotiate, with or without its en-
9 dorsement or guaranty, and guarantee notes, participation
10 certificates, and other evidence of indebtedness (provided that
11 the Corporation shall not issue its own securities, except par-
12 ticipation certificates for the purpose of carrying out section
13 925(c) or participation certificates as evidence of indebted-
14 ness held by the Corporation in connection with settlement of
15 claims under section 931(h)); to make and carry out such
16 contracts and agreements as are necessary and advisable in
17 the conduct of its business; to exercise the priority of the
18 Government of the United States in collecting debts from
19 bankrupt, insolvent, or decedents' estates; to determine the
20 character of and the necessity for its obligations and expendi-
21 tures, and the manner in which they shall be incurred, al-
22 lowed, and paid, subject to provisions of law specifically ap-
23 plicable to Government corporations; to collect or compro-
24 mise any obligations assigned to or held by the Corporation
25 including any legal or equitable rights accruing to the Corpo-

1 ration; and to take such actions as may be necessary or ap-
2 propriate to carry out the powers herein or hereafter specifi-
3 cally conferred upon it.

4 (e) USE OF FUNDS.—Funds made available for the pur-
5 pose of this part may be used for printing and binding without
6 regard to the provisions of any other law, and for expendi-
7 tures outside the United States for the procurement of sup-
8 plies and services without regard to such laws and regula-
9 tions governing the obligation and expenditure of funds of the
10 United States Government as may be necessary to accom-
11 plish the purposes of this part.

12 (f) APPLICATION OF OTHER LAWS.—No provision of
13 any other law shall prohibit the operation of the programs
14 authorized by this part in any less developed country if the
15 President of the United States has determined that their op-
16 eration is important to the national interest.

17 (g) ENVIRONMENTAL IMPLICATIONS.—The Corpora-
18 tion shall develop and implement specific criteria intended to
19 minimize the potential environmental implications of projects
20 undertaken by investors abroad in accordance with any of the
21 programs authorized by this part.

22 (h) TRADE PROFILE.—The Corporation shall prepare
23 and maintain for each investment project it insures, finances,
24 or reinsures, a profile consisting of data appropriate to meas-

1 ure the expected trade and developmental effects of such
2 project.

3 (i) HUMAN RIGHTS, ETC.—The Corporation shall take
4 into account in the conduct of its programs in a country, in
5 consultation with the Secretary of State, all available infor-
6 mation about observance of and respect for human rights and
7 fundamental freedoms in such country and the effect the op-
8 eration of such programs will have on human rights and fun-
9 damental freedoms in such country. The Corporation shall
10 not provide any insurance, reinsurance, guaranty, or loan for
11 any project in a country when the Secretary of State has
12 made a determination under section 116 of the Foreign As-
13 sistance Act that the government of such country engages in
14 a consistent pattern of gross violations of internationally rec-
15 ognized human rights unless such a project will directly bene-
16 fit the needs of the needy people in such a country or the
17 national security interest of the United States.

18 (j) APPLICATION OF 18 U.S.C. 955.—The provisions of
19 section 955 of title 18 of the United States Code shall not
20 apply to prevent any person, including any individual, part-
21 nership, corporation, or association, from acting for, or par-
22 ticipating in, any operation or transaction arising under this
23 part, or from acquiring any obligation issued in connection
24 with any operation or transaction arising under this part.

1 (k) OVERRIDE OF RENEGOTIATION ACT.—Whenever
2 the President of the United States determines it to be in fur-
3 therance of the purposes of this part, the functions authorized
4 under this part may be performed without regard to such
5 provisions of law (other than the Renegotiation Act of 1951,
6 (50 U.S.C. App. 1211 et seq.)), regulating the making, per-
7 formance, amendment, or modification of contracts and the
8 expenditure of funds of the United States Government as the
9 President may specify.

10 (l) CONTRACTS, ETC.—The Corporation may make and
11 perform agreements and contracts with, or enter other trans-
12 actions with, any individual, corporation, or other body of
13 persons, government or government agency, whether within
14 or without the United States and international organizations
15 in furtherance of the purposes and within the limitations of
16 this part.

17 (m) CARRYOVER OF FUNDS.—Except as otherwise pro-
18 vided in this part, funds shall be available to carry out the
19 provisions of this part as authorized and appropriated each
20 fiscal year. Provisions of this Act authorizing the appropri-
21 ation of funds shall be construed to authorize the granting in
22 any appropriation Act of authority to enter into contracts
23 within the amounts so authorized to be appropriated, creating
24 obligations in advance of appropriations.

1 (n) FOREIGN CURRENCIES.—Foreign currencies re-
2 ceived by the Corporation as a result of its operations may be
3 transferred to the Secretary of the Treasury for sale to agen-
4 cies of the United States Government for payment of their
5 obligations outside the United States, and the United States
6 dollars received as reimbursement shall be returned to the
7 Corporation. Foreign currencies so received which are in
8 excess of the requirements of the United States Government
9 in payment of its obligations outside the United States shall
10 be available for the authorized purposes of this part.

11 (o) GIFTS, BEQUESTS, ETC.—The Corporation may
12 accept and use in furtherance of the purposes of this part,
13 money, funds, property, and services of any kind made avail-
14 able by gift, devise, bequest, grant, or otherwise for such
15 purpose.

16 **SEC. 934. SMALL BUSINESS DEVELOPMENT.**

17 The Corporation shall undertake, in cooperation with
18 appropriate departments, agencies, and instrumentalities of
19 the United States as well as private entities and others, to
20 broaden the participation of United States small business, co-
21 operatives, and other small United States investors in the
22 development of small private enterprise in less developed
23 friendly countries or areas. The Corporation shall allocate up
24 to 50 per centum of its annual net income, after making suit-
25 able provision for transfers and additions to reserves, to assist

1 and facilitate the development of projects consistent with the
2 provisions of this section. Such funds may be expended, not-
3 withstanding the requirements of section 925(a), on such
4 terms and conditions as the Corporation may determine,
5 through loans, grants, or other programs authorized by sec-
6 tion 928.

7 **SEC. 935. REPORTS TO THE CONGRESS.**

8 After the end of each fiscal year, the Corporation shall
9 submit to the Congress a complete and detailed report of its
10 operations during such fiscal year. Such report shall
11 include—

12 (1) an assessment, based upon the profiles re-
13 quired by section 933(h), of the trade and development
14 impact and benefits of the projects with respect to
15 which such profiles are prepared, and of the extent to
16 which the operations of the Corporation complement or
17 are compatible with the trade and development policies
18 of the United States; and

19 (2) a description of any project for which the
20 Corporation—

21 (A) refused to provide any insurance, reinsur-
22 ance, guaranty, financing, or other financial sup-
23 port, on account of gross violations of human
24 rights referred to in section 933(i); or

1 (B) notwithstanding such violations, provided
2 such insurance, reinsurance, guaranty, financing,
3 or financial support, on the basis of a determina-
4 tion (i) that the project will directly benefit the
5 needy people in the country in which the project
6 is located, or (ii) that the national security interest
7 so requires.

8 **Subpart B—Amendment of Foreign Assistance Act of 1961**

9 **SEC. 941. CONFORMING AMENDMENTS.**

10 The Foreign Assistance Act of 1961 is hereby amended
11 as follows:

12 (1) Section 222 is amended by deleting the paren-
13 thetical language in line three of subsection (a) thereof
14 and inserting: “(as defined in section 108(c) of the
15 Overseas Private Investment Corporation Act)”.

16 (2) Section 222A is amended by deleting subsec-
17 tions (f) and (g) thereof.

18 (3) Section 610 is amended by deleting the follow-
19 ing language in subsection (a) thereof: “(except funds
20 made available pursuant to title IV of chapter 2 of
21 part I)”.

22 (4) Section 620 is amended by deleting subsection
23 (l) thereof.

24 (5) Section 636 is amended by deleting the follow-
25 ing language in subsection (f) thereof: “or by the Cor-

1 poration established under title IV of chapter 2 of part
2 I with respect to loan activities which it carries out
3 under the provisions of the Agricultural Trade Devel-
4 opment and Assistance Act of 1954, as amended”.

5 (6) Title IV of chapter 2 of part I of the Foreign
6 Assistance Act of 1961 is repealed.

7 **SEC. 942. TRANSITION PROVISIONS.**

8 (a) **CONTINUATION OF OPIC FUNCTIONS AND AU-**
9 **THORITY.**—The amendments made by this part shall not be
10 construed to effect a termination of any statutory authority
11 for the Overseas Private Investment Corporation, except to
12 the extent that such amendments provide for a change in the
13 statutory authority for the Corporation as it existed on the
14 day before the date of enactment of this Act. The status of
15 any employee, equipment, funds, or authority for credits,
16 loans, or guarantees by the Corporation on the day before the
17 date of enactment of this Act shall not be affected by the
18 amendments made by this part except to the extent that the
19 statutory authority for the Corporation, as amended by this
20 part, is different from that of the Corporation on the day
21 before such date.

22 (b) **SAVINGS PROVISIONS.**—

23 (1) All orders, determinations, rules, regulations,
24 permits, grants, contracts, certificates, licenses, and
25 privileges—

1 (A) which have been issued, made, granted,
2 or allowed to become effective by the Corporation
3 or by a court of competent jurisdiction in the per-
4 formance of functions which are carried out under
5 the amendments made by this Act, and

6 (B) which are in effect at the time this part
7 takes effect,

8 shall continue in effect according to their terms until
9 modified, terminated, superseded, set aside, or revoked
10 in accordance with the law by the Corporation, by a
11 court of competent jurisdiction, or by operation of law.

12 (2) The amendments made by this part shall not
13 affect any proceedings, including notices of proposed
14 rulemaking, or any application for any license, permit,
15 certificate, or financial assistance pending on the effec-
16 tive date of this Act before the Corporation; but such
17 proceedings and applications, to the extent that they
18 relate to functions for which the authority is reenacted,
19 shall be continued. Orders shall be issued in such pro-
20 ceedings, appeals shall be taken therefrom, and pay-
21 ments shall be made pursuant to such orders, as if this
22 part had not been enacted; and orders issued in any
23 such proceedings shall continue in effect until modified,
24 terminated, superseded, or revoked by the Corporation,
25 by a court of competent jurisdiction, or by operation of

1 law. Nothing in this paragraph shall be deemed to pro-
2 hibit the discontinuance or modification of any such
3 proceeding under the same terms and conditions and to
4 the same extent that such proceeding could have been
5 discontinued or modified if this part had not been
6 enacted.

7 (3) The provisions of this part shall not affect
8 suits commenced prior to the effective date of this part,
9 and, in all such suits, proceedings shall be had, appeals
10 taken, and judgments rendered in the same manner
11 and effect as if this part had not been enacted.

12 (4) No suit, action, or other proceeding com-
13 menced by or against any officer in the official capacity
14 of such individual as an officer of the Corporation shall
15 abate by reason of the enactment of this part. No
16 cause of action by or against the Corporation, or by or
17 against any officer thereof in the official capacity of
18 such officer, shall abate by reason of the enactment of
19 this part.

20 (c) TECHNICAL AND CONFORMING CHANGES.—The
21 President of the Overseas Private Investment Corporation
22 shall, within 90 days after the date of enactment of this Act,
23 submit to the Committee on Foreign Relations of the Senate
24 and the Committee on Foreign Affairs of the House of Rep-
25 resentatives, a draft of any technical or conforming changes

1 in the Foreign Assistance Act of 1961, and any other statute
2 of the United States, which are necessary to reflect the
3 changes in the substantive provisions of law, and cross-refer-
4 ences to provisions made by this part.

5 **PART 3—ROLE OF ALL UNITED STATES AGENCIES**
6 **IN EXPORT EXPANSION**

7 **SEC. 951. INTERNATIONAL DEVELOPMENT COOPERATION**
8 **AGENCY.**

9 (a) **EXPORT POTENTIAL TO BE CONSIDERED.**—When
10 considering which projects or other activities to include in
11 United States foreign aid programs around the world, the
12 potential for United States exports in the short, medium, and
13 long run shall be a primary decisionmaking factor.

14 (b) **REIMBURSABLE DEVELOPMENT PROGRAM.**—

15 (1) **FINDINGS.**—The Congress finds that—

16 (A) the reimbursable development program
17 provides funds for feasibility studies that can and
18 should provide a valuable push for United States
19 exports. The program should not be treated as
20 only a foreign aid program, but as a legitimate aid
21 to United States exporters of goods and services.
22 The program should be expanded and should
23 permit applications directly from United States
24 firms.

(B) the reimbursable development program under sections 607(a) and 661 of the Foreign Assistance Act of 1961 provides valuable opportunities for the promotion of United States exports and the furtherance of economic development in the developing nations through the reimbursable development program; and

(C) other developed countries have made much greater use of the kinds of programs authorized by the above sections than has the United States, enhancing their own economic relations with developing countries.

(2) OFFICE OF REIMBURSABLE DEVELOPMENT TO BE SEPARATED FROM AID.—The Director of the International Development Cooperation Agency shall transfer the functions of the Office of Reimbursable Development from the Agency for International Development to an independent functional status within the International Development Cooperation Agency, the head of which shall have responsibility for the administration of the reimbursable development program and shall report directly to the Director.

SEC. 952. OFFICE OF MANAGEMENT AND BUDGET.

Budget allocated to export-related activities should reflect the new high priority assigned to export expansion.

1 Office of Management and Budget should do everything in its
2 power to assure that adequate budget allocations are made
3 available to carry out the programs prescribed in this Act and
4 others considered necessary by export policymakers. Budget
5 cuts should be called for only when the reviews of export
6 expansion programs called for in section 913 indicate such a
7 need. Personnel assigned to examine and determine budget
8 levels for export-related programs should have adequate
9 knowledge and training in the international trade field to un-
10 derstand what is required to achieve export policy objectives.

11 **SEC. 953. ROLE OF THE JUSTICE DEPARTMENT.**

12 In interpreting and implementing laws that affect
13 international trade and business practices, the Department of
14 Justice should do what it can to facilitate procedures for ex-
15 porters. In cases of vagueness in the laws, interpretations
16 should favor export interests unless clearly against the na-
17 tional interest.

18 **SEC. 954. SMALL BUSINESS ADMINISTRATION.**

19 Small businesses often require special assistance to
20 enter the export market. The Small Business Administration
21 can play a key role in advising small business, augmenting
22 programs of the International Trade Administration. In addi-
23 tion to the new programs called for in this Act, the staff of
24 the Small Business Administration should be generally aware
25 of the benefits of export to small business development and

1 should use every opportunity to provide information and as-
2 sistance to potential exporters.

3 **SEC. 955. DEPARTMENT OF ENERGY.**

4 In making policy decision on coal, nuclear power fuels
5 and other energy matters, the impact on the ability of the
6 United States to export in a reliable manner should be a key
7 consideration.

8 **SEC. 956. THE CONGRESS.**

9 Each committee of the Congress shall include in their
10 reports of bills and resolutions a section on the effect, if any,
11 of the bill or resolution on the international competitiveness
12 of the United States, including, but not limited to, exports,
13 productivity, research, testing, and development, financing,
14 disincentives or restraints, and additional production, manu-
15 facturing or distribution costs.

16 **PART 4—NATIONAL EXPORT COUNCIL**

17 **SEC. 961. ESTABLISHMENT AND MEMBERSHIP.**

18 (a) **IN GENERAL.**—There is hereby created a National
19 Export Council (hereinafter referred to as “the Council”)
20 which shall be composed of the following members:

- 21 (1)(A) the Secretary of State;
- 22 (B) the Secretary of the Treasury;
- 23 (C) the Secretary of Agriculture;
- 24 (D) the Secretary of Commerce;
- 25 (E) the Secretary of Labor;

1 (F) the United States Trade Representative;

2 (G) the President and Chairman of the Export-
3 Import Bank of the United States; and

4 (H) the Administrator of the Small Business
5 Administration;

6 (2) three members of the United States Senate,
7 designated by the President of the Senate and three
8 members of the United States House of Representa-
9 tives designated by the Speaker of the House;

10 (3) three Governors of States or territories, desig-
11 nated by the President; and

12 (4) no more than eighteen private citizens repre-
13 senting business and industry, agriculture, international
14 banking, and labor to be appointed by the President,
15 including at least five small business persons who are
16 actively involved in export trade.

17 (b) CHAIRMAN.—The President shall appoint a Chair-
18 man of the Council from among its private citizen members
19 who shall preside over the meetings of the Council.

20 (c) EXECUTIVE DIRECTOR.—The Secretary of Com-
21 merce, with the concurrence of the Chairman, shall appoint
22 an Executive Director.

23 SEC. 962. FUNCTIONS.

24 (a) IN GENERAL.—The Council shall serve as a na-
25 tional advisory body on matters relating to United States

1 export trade. In carrying out such functions, the Council
2 shall—

3 (1) survey and evaluate the export promotion and
4 development activities of the communities represented
5 by the membership;

6 (2) identify and examine specific problems which
7 business, industrial, and agricultural practices may
8 cause for export trade;

9 (3) examine the needs of business, industry, and
10 agriculture to expand their efforts; and

11 (4) recommend specific legislative and administra-
12 tive solutions to these problems and needs.

13 (b) LIAISON; EXPORT EXPANSION ENCOURAGE-
14 MENT.—The Council shall—

15 (1) act as liaison among the communities repre-
16 sented by its membership and may provide a forum for
17 those communities on current and emerging problems
18 and issues in the field of export promotion and develop-
19 ment, and

20 (2) encourage the business, industrial, and agricul-
21 tural communities to enter new foreign markets and to
22 expand existing export programs.

23 (c) ADVICE ON FEDERAL MATTERS.—The Council
24 shall provide advice on Federal plans and actions that affect

1 export promotion and development policies which have an
2 impact on those communities represented by its membership.

3 (d) EXECUTIVE AND OTHER COMMITTEES.—The
4 Council shall establish an executive committee and such
5 other subordinate committees it considers necessary for the
6 performance of its functions including, but not limited to,
7 committees on export administration, export expansion and
8 domestic disincentives, small business and export promotion,
9 the General Agreement on Tariffs and Trade and the Multi-
10 lateral Trade Negotiations, and Agriculture and East-West
11 Trade. The chairman and members of the executive and sub-
12 ordinate committees shall be designated by the Chairman of
13 the Council from among the membership of the Council.

14 SEC. 963. ADMINISTRATIVE PROVISIONS.

15 (a) IN GENERAL.—The Secretary of Commerce shall
16 provide the Council, including its executive and subordinate
17 committees, with administrative and staff services, support
18 and facilities as may be necessary for the effective perform-
19 ance of its functions.

20 (b) COMPENSATION.—Each member of the Council, in-
21 cluding its executive and subordinate committees, who is not
22 otherwise paid a salary by the Federal Government, shall
23 receive no compensation from the United States by virtue of
24 their service on the Council, but all members may receive the

1 transportation and travel expenses, including per diem in lieu
2 of subsistence, authorized by law.

3 (c) APPLICATION OF FEDERAL ADVISORY COMMITTEE
4 ACT.—The functions of the President under the Federal Ad-
5 visory Committee Act (5 U.S.C. App. I) except that of re-
6 porting annually to the Congress, which are applicable to the
7 Council shall be performed by the Secretary of Commerce.

8 SEC. 964. ANNUAL REPORT.

9 The Council shall transmit to the President and the
10 Congress, not later than March 31 of each year, a full report
11 on its activities, and the activities of its subordinate
12 committees.

13 SEC. 965. AUTHORIZATIONS.

14 There are authorized to be appropriated such sums as
15 may be necessary to carry out this title.

16 PART 5—COMMERCE DEPARTMENT

17 SEC. 971. COMMERCIAL OFFICERS OVERSEAS.

18 In order to develop, maintain, and expand international
19 markets for the products and services of the United States; to
20 insure the promotion and protection of United States trade
21 and commercial services abroad for United States trade and
22 commercial interests around the world; to provide trade and
23 commercial services abroad for United States firms and busi-
24 nesses and trade and commercial organizations; and to secure
25 trade and commercial information useful for the expansion of

1 exports of United States products and services, the Secretary
2 of Commerce (hereinafter referred to in this part as the "Sec-
3 retary") is authorized to appoint such commercial ministers,
4 commercial counselors, and commercial attachés, who shall
5 be employees of the Department of Commerce (and who shall
6 report to the Under Secretary for International Trade), as
7 the Secretary determines to be necessary to carry out the
8 purposes of this title and to assign such commercial minis-
9 ters, commercial counselors and commercial attachés to serv-
10 ice abroad.

11 **SEC. 972. TRAINING OF COMMERCIAL OFFICERS.**

12 Upon appointment, commercial officers shall participate
13 in training sessions designed by the Secretary, in cooperation
14 with the Department of State, the Foreign Service Institute,
15 and other Federal agencies, to study export and import pro-
16 grams and to examine the needs of United States businesses
17 for export information and assistance. As part of this training
18 program the Secretary shall assign each officer to a field
19 office of the Department to work in conjunction with the De-
20 partment's field personnel responsible for implementation of
21 export programs.

22 **SEC. 973. RANK AND PRIVILEGES.**

23 Commercial ministers, commercial counselors, and com-
24 mercial attachés assigned to posts abroad shall be accorded
25 the same rank and privileges as those of other ministers,

1 counselors, or attachés in the United States embassies and
2 consulates.

3 **SEC. 974. RELATIONSHIP TO DIPLOMATIC MISSION.**

4 Upon the request of the Secretary, the Secretary of
5 State shall regularly and officially attach the commercial
6 ministers, commercial counselors, and commercial attachés
7 appointed and assigned hereunder to the diplomatic mission
8 of the United States in the country in which such commercial
9 ministers, commercial counselors, or commercial attachés or
10 other personnel are to be assigned by the Secretary, and
11 shall obtain for them diplomatic privileges and immunities
12 equivalent to those enjoyed by Foreign Service personnel of
13 comparable rank and salary.

14 **SEC. 975. FUNCTIONS AND DUTIES.**

15 Commercial ministers, commercial counselors, and com-
16 mercial attachés appointed and assigned abroad by the Secre-
17 tary under the title, and other personnel employed under
18 their direction, in furtherance of the purposes set forth in
19 section 971 and in accordance with regulations prescribed by
20 the Secretary, shall have the following functions and duties:

21 (1) trade and commercial services, including, but
22 not limited to—

23 (A) protection and promotion of United
24 States trade and commercial interests and invest-

1 ments, including industrial property rights, within
2 their districts;

3 (B) current market oriented assistance to
4 United States firms and businesses visiting or op-
5 erating within their districts;

6 (C) appointments and introductions for
7 United States business persons visiting within
8 their districts;

9 (D) assistance in pursuing trade
10 opportunities;

11 (E) assistance, when appropriate, in the
12 adjustment of trade and commercial disputes in-
13 volving United States firms or commercial and fi-
14 nancial interest; and

15 (F) assistance to other United States Gov-
16 ernment agencies or State agencies, and to firms
17 and businesses with respect to trade missions,
18 trade fairs, and other international trade and com-
19 mercial exhibitions;

20 (2) export promotion, including, but not limited
21 to—

22 (A) the promotion of United States exports
23 and commercial interests in their districts;

1 (B) the creation, within the scope of their
2 duties and as appropriate, of a demand for United
3 States products and services in such districts; and

4 (C) the promotion of tourism in the United
5 States by residents of the districts to which they
6 are assigned;

7 (3) semiannual reports to the Secretary including,
8 but not limited to, the following information:

9 (A) market conditions, commercial develop-
10 ments, and the economic climate within their dis-
11 tricts, emphasizing changes between reports;

12 (B) implementation of and compliance with
13 the provisions of multilateral and bilateral trade
14 agreements with the United States by the govern-
15 ment, agencies, or instrumentalities of the country
16 to which they are assigned;

17 (C) specific industry and commodity
18 conditions;

19 (D) foreign law and business practices affect-
20 ing United States trade and commercial interests;
21 and

22 (E) trade opportunities on an industry basis;

23 (4) maintain and make available current data on
24 the commercial standing and capacity of foreign firms
25 within their districts; and

1 (5) such other functions and duties as the Secre-
2 tary determines to be necessary and proper for achiev-
3 ing the purposes of this title.

4 **SEC. 976. ASSIGNMENT TO UNITED STATES.**

5 Any officer or employee appointed and assigned to a
6 post abroad pursuant to this part may, in the discretion of the
7 Secretary, be assigned for duty in the continental United
8 States without regard to the civil service laws (and without
9 reduction in grade if an appropriate position at the employ-
10 ee's grade is not available in any agency of the Department
11 of Commerce) for a period of not more than 3 years.

12 **SEC. 977. OFFICE SPACE, EQUIPMENT, AND ADMINISTRATIVE**
13 **AND CLERICAL PERSONNEL.**

14 The Secretary of State, upon request of the Secretary,
15 shall provide office space, equipment, facilities, and such
16 other administrative and clerical services as may be required
17 for the performance of the functions and duties of the com-
18 mercial ministers, commercial counselors, and commercial at-
19 tachés appointed and assigned abroad under this part, and
20 other personnel employed under their direction, appropriate
21 to Foreign Service officers or other personnel of the same
22 rank and salary. The Secretary is authorized to reimburse or
23 advance funds to the Secretary of State for such services.
24 The Secretary is authorized, in accordance with applicable
25 law and regulations prescribed by the Secretary, to employ

1 locally such United States nationals or other personnel, as
2 the Secretary deems necessary to further the purpose set
3 forth in section 971 of this part or to the exercise and carry-
4 ing out of the functions and duties of the commercial minis-
5 ters, commercial counselors, and commercial attachés and
6 other personnel appointed and assigned abroad under this
7 part.

8 **SEC. 978. AGENCY, SERVICES, PERSONNEL, AND FACILITIES.**

9 Upon the request of the Secretary, each Federal agency
10 may make its services, personnel, and facilities available to
11 the commercial ministers, commercial counselors, and com-
12 mercial attachés appointed and assigned to a post abroad
13 under this part in the performance of their functions and
14 duties. The Secretary is authorized to reimburse or advance
15 funds to any such agency for services, personnel, and facili-
16 ties so made available.

17 **SEC. 979. PERFORMANCE OF FUNCTIONS IN FOREIGN LOCAL-**
18 **ITIES.**

19 Each commercial minister, commercial counselor, or
20 commercial attaché appointed and assigned under this part to
21 a United States diplomatic mission abroad, may carry out the
22 functions and duties authorized hereunder in such other na-
23 tions as the Secretary, in consultation with the Secretary of
24 State, may determine to be necessary and proper in order to
25 carry out the purposes of this part.

1 SEC. 980. REPORTS AND DISPATCHES—AVAILABILITY TO
2 INTERESTED GOVERNMENT AGENCIES.

3 The reports and dispatches prepared by the commercial
4 ministers, commercial counselors, or commercial attachés ap-
5 pointed and assigned abroad under this title shall be made
6 available to the Department of State, the Small Business
7 Administration and to other interested agencies of the
8 Government.

9 SEC. 981. REPRESENTATIVE ALLOWANCES.

10 Any commercial minister, commercial counselor, or
11 commercial attaché appointed and assigned by the Secretary
12 to a post abroad under this part, under regulations prescribed
13 by the Secretary, may be authorized to receive a representa-
14 tion allowance in an amount to be determined by
15 considering—

16 (1) the extent to which such commercial minister,
17 commercial counselor, or commercial attaché can effec-
18 tively use funds to further the purposes of this part;

19 (2) travel and entertainment expenses customary
20 in the private trade for persons of comparable rank and
21 salary; and

22 (3) the customs and practices in the nation to
23 which he or she is assigned.

24 SEC. 982. ALLOWANCES AND BENEFITS.

25 The Secretary may, under such rules and regulations as
26 may be prescribed by the President or his designee, provide

1 to the commercial ministers, commercial counselors, and
2 commercial attachés appointed and assigned under this part,
3 allowances and benefits similar to those provided by title IX
4 of the Foreign Service Act of 1946. Leaves of absence for
5 commercial ministers, commercial counselors, and commer-
6 cial attachés appointed and assigned under this part shall be
7 on the same basis as is provided for Foreign Service of the
8 United States by the Annual and Sick Leave Act of 1951.

9 **SEC. 983. ADVANCE PAYMENT FOR RENT AND OTHER SERV-**
10 **ICES: FUNDS FOR COURTESIES TO FOREIGN**
11 **REPRESENTATIVES.**

12 In any foreign country where customs or practices re-
13 quire payment in advance for rent or other service, such pay-
14 ment may be authorized by the Secretary in accordance with
15 regulations prescribed by the Secretary, upon consultation
16 with the Secretary of State. Funds available for the purposes
17 of this part may be used for extending courtesies to repre-
18 sentatives of foreign countries, when so provided in appropri-
19 ation or other law.

20 **PART 6—REVIEW OF UNITED STATES EXPORT**
21 **PROGRAMS**

22 **SEC. 991. REVIEW.**

23 (a) **REPORT BY COMPTROLLER GENERAL.**—Within 12
24 months after the enactment of this Act, the Comptroller Gen-
25 eral of the United States shall (1) report to the Congress of

1 the United States on his analysis of the organization of inter-
2 national trading and financing programs of the United States;
3 (2) compare and analyze the structure and effectiveness of
4 foreign export promotion programs; (3) evaluate the trade ac-
5 tivities of the International Trade Administration of the De-
6 partment of Commerce, Export-Import Bank, Overseas Pri-
7 vate Investment Corporation, and trade analysis capability of
8 the Office of Management and Budget, Department of the
9 Treasury, and Department of State; and (4) make such rec-
10 ommendations as he deems feasible for the establishment or
11 reorganization of new export promotion agencies or the adop-
12 tion of new programs.

13 (b) ASSISTANCE.—In carrying out his functions under
14 section 904(a), the Comptroller General shall have such co-
15 operation and support services from the Library of Congress
16 and the Congressional Research Service as required.

17 (c) PERIODIC REVIEW.—It is the sense of Congress
18 that the appropriate committees of Congress shall review the
19 trade organization of the United States Government on a
20 regular and periodic basis and evaluate the performance and
21 effectiveness of such organization and, if appropriate, recom-
22 mend the reorganization of such functions to increase the ex-
23 ports and international competitiveness of United States
24 firms.